

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA, : 11-CR-00683(NG)
: :
: :
-against- : United States Courthouse
: Brooklyn, New York
: :
STEVENSON DUNN, LEE HYMOWITZ : Wednesday, March 26, 2014
AND MICHAEL FREEMAN, : 9:45 a.m.
: :
Defendant. :
- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE NINA GERSHON
UNITED STATES SENIOR DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: LORETTA E. LYNCH, ESQ.
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BY: ANTHONY M. CAPOZZOLO, ESQ.
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Assistant United States Attorney

For the Defendant: BY: ROBERT A. EVANS, JR., ESQ.
Stevenson Dunn

For the Defendant: BY: MAURICE H. SERCARZ, ESQ.
Lee Hymowitz ROBERT CALIENDO, ESQ.

For the Defendant: BY: GERALD J. DICHARA, ESQ.
Michael Freeman NICHOLAS PINTO, ESQ.

Also Present: Naushan Richards, Special Agent
Susannah Apuzzo, Paralegal

Court Reporter: VICTORIA A. TORRES BUTLER, CRR
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Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcription.

Side-Bar

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1 (In open court.)

2 (Judge NINA GERSHON enters the courtroom.)

3 (The following occurs outside the presence of the
4 jury.)

5 THE COURTROOM DEPUTY: All rise.

6 United States District Court for the Eastern
7 District of New York is now in session, the Honorable Nina
8 Gershon is now presiding.

9 THE COURT: I would like to first call in Juror
10 Number 1 and advise her that I am not going to allow her to
11 bring her dog. She will have to make other arrangements.

12 (Side-bar conference held on the record out of the
13 hearing of the courtroom.)

14

15 (Side-bar.)

16 THE COURT: Hi, how are you?

17 THE JUROR: Good.

18 THE COURT: Good. I just wanted to tell that you I
19 read your letter --

20 THE JUROR: Yes.

21 THE COURT: -- and we're not in a position to
22 accommodate the dog.

23 THE JUROR: Okay.

24 THE COURT: She sounds very sweet, I'm sorry.

25 THE JUROR: Are we going to know when this is going

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1 to be wrapped up?

2 THE COURT: We're moving along very well, but we
3 will be continuing into next week, that is clear.

4 THE JUROR: Into the majority of the week?

5 THE COURT: I can't, there is no way to predict.

6 THE JUROR: Okay.

7 THE COURT: So, I wanted to tell you as soon as
8 possible.

9 THE JUROR: To make arrangements.

10 THE COURT: To give you a chance to make a call and
11 make whatever arrangements you need to make. I appreciate
12 that very, very much.

13 THE JUROR: Thank you, thanks.

14 THE COURT: Okay.

15 (Side-bar end.)

16

17 (In open court.)

18 THE COURT: All right, the juror seems fine with
19 that resolution and I think we need to wait for Mr. Dunn.

20 MR. EVANS: Let me go see if he's outside.

21 (Pause in the proceedings.)

22 THE COURTROOM DEPUTY: Criminal cause for a trial,
23 United States versus Stevenson Dunn, et al.

24 May I have the appearances for the Government,
25 please.

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1 MS. POSA: Good morning, Your Honor.

2 Cristina Posa, Anthony Capozzolo, Special Agent
3 Naushan Richards and Susannah Apuzzo for the Government.

4 THE COURTROOM DEPUTY: For Stevenson Dunn.

5 MR. EVANS: The offices of Evans and Al-Shabazz by
6 Robert Anthony Evans.

7 Good morning, Your Honor.

8 THE COURTROOM DEPUTY: For Lee Hymowitz.

9 MR. SERCARZ: For the defendant Hymowitz, Sercarz &
10 Riopelle by Maurice Sercarz and Robert Caliendo.

11 THE COURTROOM DEPUTY: For Michael Freeman.

12 MR. DiCHIARA: Nicholas Pinto and Gerald DiChiara
13 for Mr. Freeman.

14 Good morning, Your Honor.

15 THE COURTROOM DEPUTY: Please, be seated.

16 THE COURT: Good morning, Counsel.

17 Victor, are all the jurors here?

18 THE COURTROOM DEPUTY: Yes, Judge.

19 THE COURT: All of our jurors are present, so unless
20 there is something that needs to be done before they come in,
21 perhaps we can put off any other issues until after we're done
22 unless they are very brief.

23 One issue was that I understand Mr. DiChiara asked
24 for the repetition in the main charge of the statement
25 regarding Pre-Trial statements by Mr. Dunn. I see no one has

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1 any objection to doing that, so I think we should put it after
2 the section called prior inconsistent statements. We will
3 have another heading called Mr. Dunn's prior statements
4 regarding Mr. Hymowitz and Mr. Freeman.

5 Is that acceptable to everyone?

6 MR. DiCHIARA: That's fine, Judge.

7 MR. SERCARZ: Yes.

8 MR. EVANS: That's acceptable.

9 MS. POSA: Fine.

10 THE COURT: All right.

11 And Mr. Sercarz, did you have any other thoughts
12 about your request regarding mere presence?

13 MR. SERCARZ: No, Your Honor.

14 I would just like the record to reflect that I have
15 made the request that the mere presence charge and the mere
16 association charge be put in a place where it indicates that
17 it applies both to substantive and the conspiracy charges. We
18 did not find case law specifically addressing the issue.

19 THE COURT: Ms. Posa, the Government is still
20 opposed to that?

21 MS. POSA: Yes, Your Honor.

22 THE COURT: My concern, frankly, is that it is
23 likely to be confusing and may have a contrary effect to what
24 you are asking for, and I certainly don't think it is
25 required.

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1 So, I am going to deny that request.

2 THE COURTROOM DEPUTY: Shall I bring in the jurors?

3 THE COURT: Yes, let's bring the jurors in.

4 Mr. Hymowitz can resume the stand.

5 While we're bringing them in, there is something
6 that I can alert you to.

7 With respect to the cooperation agreements in the
8 charge I had in brackets reduced charges or didn't pursue
9 other charges. I think the cooperation agreement simply
10 provides that the Government will not pursue other charges and
11 there are no reductions of charges, so I struck the section
12 that says reduced charges.

13 If you want to take a look at the cooperation
14 agreements and tell me if you have any problem with that, let
15 me know. If not, it is going to go in that way.

16 (Witness resumes stand.)

17

18 (Continued on following page.)

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Hymowitz - direct - Sercarz

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1 L E E H Y M O W I T Z,

2 called as a witness, having been previously duly
3 sworn, was examined and testified as follows:

4 THE COURTROOM DEPUTY: All rise.

5 (Jury enters.)

6 THE COURTROOM DEPUTY: Thank you, please be seated.

7 Please, be advised that you are still under oath.

8 THE COURT: All right, Members of the Jury, we are
9 continuing with the direct testimony of Mr. Hymowitz by
10 Mr. Sercarz.

11 DIRECT EXAMINATION (Continuing)

12 BY MR. SERCARZ:

13 Q Lee, before we move forward, there were a couple of
14 questions I neglected to ask you concerning your background
15 and employment experience.

16 You testified yesterday about having formed a
17 partnership with several individuals Marret, Mr. Freeman,
18 Mr. Rappaport. At one point was there a gentleman named
19 Mr. Weiss with whom you were also in partnership?

20 A Yes, the firm was Weiss, Hymowitz & Freeman.

21 Q Did there come a time during the course of your various
22 partnerships when you gained commercial banking experience?

23 A Yes. Mr. Weiss owned a bank by the name of Royal
24 Mortgage Bankers and that would be in the early to mid-'90s.
25 Mr. Weiss and his partner, Mr. Scaringi were what I considered

Hymowitz - direct - Sercarz

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1 older gentlemen at the time, probably my age, and they were
2 sort of semi-retired and I oversaw the commercial side of the
3 bank.

4 Q What exactly did you do? What does that mean when you
5 oversaw the commercial side of the bank?

6 A Any potential loans that would come in, I would review.
7 I would go over the numbers, make a determination whether we
8 thought the bank should invest in those mortgages.

9 Q By the way, are you employed at the present time?

10 A Yes, I am.

11 Q What do you do?

12 A I am vice president of business affairs for an
13 international corporation.

14 Q What is the name of that corporation?

15 A Fortune Group.

16 Q What do they do?

17 A We have several different types of businesses throughout
18 the United States, Mexico, China. The major business that
19 they have is metal and plastic recovery. Like, for example,
20 in Sandy from all the flooding, all the telephone wires and
21 stuff, we have national contracts with like, Verizon, AT & T
22 and Sprint, we recover all the bad wire, separate it and sell
23 it off.

24 They have another company that manufactures soda and
25 coffee machines. And the newest venture which we've gone

Hymowitz - direct - Sercarz

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1 into, which is very exciting for me, is aqua farming and
2 hydroponics. They are growing fish in factories and then
3 using the waste water to grow vegetables indoors.

4 Q More to the point, what is it that you do for them?

5 A I am sort of a Jack-of-all-trades. It's a family-owned
6 business and my job is to just make sure that whatever we're
7 doing sort of goes forward.

8 They are busy with the making of money so, for
9 example, we are constantly buying businesses. The last
10 year-and-a-half or so I've made certain that we've had a new
11 employee handbook that's been -- for everyone in our company.

12 I've been one to oversee us getting in compliance
13 with Obamacare.

14 All of our employees used to get paid on different
15 days. I hired the company Paychex so that everyone in the
16 company could get paid on a regular basis.

17 I oversee their real estate. We own probably
18 twenty-five pieces of real estate throughout the
19 United States.

20 If we get sued, it's my job to hire Counsel
21 throughout the United States to, you know, handle the cases.

22 Pretty much just about everything.

23 Q All right. Now, to get back to where we were yesterday,
24 we talked a little bit about the request for qualifications
25 that was submitted by the SML the first time around and you

Hymowitz - direct - Sercarz

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1 mentioned that there was a decision later on to re-apply for
2 an SML which you would be listed as among the developers?

3 A Yes.

4 Q Do you recall that?

5 A Yes.

6 Q Tell us when that happened.

7 A That was in 2003 going, I guess, somewhere -- I seem to
8 remember June or July of 2003.

9 Q What was the outcome of your effort to apply yet again to
10 be among the three developers on the SML projects?

11 A About six months after we applied we were denied.

12 Q Again, when you say we were denied, are you talking about
13 the SML having been denied the right to bid on -- to be
14 included in projects or you were denied the right to join them
15 as a developer?

16 A The whole group was denied.

17 Q All right. And what was the outcome of that? What was
18 the upshot of that?

19 A We did not go forward with that sixth round.

20 Q Just so that I'm clear and we don't lose the time frame,
21 the earlier request for qualifications in which you were not
22 listed as a developer is the one that was used to select
23 developers on the Bed-Stuy --

24 A No.

25 Q -- projects?

Hymowitz - direct - Sercarz

1922

1 A No.

2 Q All right. Just to straighten me out, how is it then
3 that the SML was selected on the Bedford Stuyvesant project?

4 A That was a separate RFQ which came out in 2002. There
5 was an RFQ that came out December of 1999, which was round
6 five. That was the NEP program.

7 Then, in 2002, there was another RFQ and that would
8 be for the approval for what I called Bushwick cluster and
9 Grove cluster and the Bedford-Stuy cluster and I think Hancock
10 might have been approved for that as well.

11 Q Okay. Let me turn your attention, just briefly to the
12 projects on which the SML worked.

13 With regard to the Lexington Avenue project, do you
14 recall approximately when it began?

15 A The, probably the group was approved probably sometime in
16 mid-2000, I would guess, because the application went in
17 probably late 2000 because I think, if I remember looking at
18 some documents, the application had to be in by March of 2000.
19 So, probably late 2000 they were approved.

20 Q All right. At the end of day, did the SML receive a
21 developer's fee for that project, if you recall?

22 A I have no knowledge that they received any fees.

23 Q And your role was as Counsel; is that correct?

24 A Yes.

25 Q With regard to the Bed-Stuy project, was the selection of

Hymowitz - direct - Sercarz

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1 a contractor conducted by sealed bids?

2 A I was not involved in that process at all. I know what
3 I've heard -- according to the RFQ, yes.

4 Q But you were not directly and personally involved in the
5 process of selecting a contractor --

6 A No, not at all.

7 Q -- is that correct?

8 Did you therefore, see any indication that the
9 general contractors were inflating their bids on that project?

10 A No.

11 Q Did you see any indication that the bidding process was
12 rigged in any way on that project?

13 A No.

14 Q I want to talk to you about your relationship with
15 Mr. Starzecki.

16 Do you remember when you first met Mr. Bogdan
17 Starzecki?

18 A I probably first met Mr. Starzecki when we were getting
19 ready for the closing of round five.

20 Q Round five is the Bedford Stuyvesant project?

21 A No, the first project, the NEP project.

22 Q That's the Lexington Avenue project?

23 A Yes.

24 Q And can you put an approximate date on that for the
25 Ladies and Gentlemen of the Jury?

Hymowitz - direct - Sercarz

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1 A Probably in 2001.

2 Q Just to remind the jury, he was the general contractor on
3 Lexington; correct?

4 A Yes.

5 Q And in the course of his general duties as contractor and
6 your duties and Counsel to the developer, did you have
7 occasion to speak with Mr. Starzecki?

8 A Yes.

9 Q Can you estimate for the Ladies and Gentlemen of the Jury
10 on the Lexington project how often you used to run into one
11 another?

12 A I would have spoken to him a lot getting ready for the
13 closing to make sure that he had his insurances in place, that
14 whatever paperwork he needed for the closing was in order and
15 then, after that, it was not unusual to see him at our office
16 from time to time.

17 Q During those meetings, did you discuss things other than
18 the work that needed to be done on the HPD project?

19 A I did not discuss any work with him with regard to the
20 NEP project.

21 Mr. Starzecki learned that I was very much involved
22 in private real estate development and whenever we were either
23 at a closing or he would drop in to the office to see Michael
24 for whatever he needed to do, he would drop into my office to
25 say hi and just find out what I was up to.

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1 Q Did those conversations continue throughout the Lexington
2 project?

3 A Yes.

4 Q Did they continue during the bidding process for the
5 Bedford Stuyvesant project?

6 A I don't know what the bidding process was for the
7 Bed-Stuy process. During the first project there were at
8 least three phases to that project.

9 Q First project meaning the Lexington?

10 A NEP Lexington Avenue, yes.

11 Q All right.

12 A There were three phases to it so we had to do at least
13 three closings. So during those years I had, you know, to be
14 involved with them at least on those three closings as well.

15 Q During those closings, did the subject of your, I'm going
16 to call it outside work, your private work, come up?

17 A Always.

18 Q Did he talk to you about them, your work?

19 A Yes, I'm sorry.

20 Q Did he make any requests of you?

21 A Early on, the first few years, no. We just talked about
22 general.

23 Q Did the tone of those conversations change?

24 A Several years later, yes, they did.

25 Q All right. Give us a time frame.

Hymowitz - direct - Sercarz

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1 A I would say three to six months before the Bed-Stuy
2 closing his interest became much more acute.

3 Q Do you recall whether or not he made any specific
4 requests of you?

5 A The conversations started to become more of I'm tired of
6 doing City work, it's too cumbersome, I don't get paid, I'd
7 like to branch out more into non-City work.

8 Q And in connection with that, did he ask you to do
9 anything for him?

10 A Not initially. As we got closer to the Bed-Stuy closing
11 the answer is yes, he was starting to ask me to see if I could
12 assist him in getting outside work.

13 Q Now, during the period 2006 and 2007, were you involved
14 in a variety of quote, unquote outside projects, private
15 projects?

16 A Yes. Almost all of my time was spent doing outside
17 development work for clients.

18 Q We've heard testimony from Mr. Starzecki regarding the
19 Lutheran Synod.

20 Do you recall that testimony?

21 A Yes.

22 Q Tell the Ladies and Gentlemen of the Jury what it was
23 that the Lutheran Synod was doing that required real estate
24 development work?

25 A Sometime in 2006 I was approached by a law firm that we

Hymowitz - direct - Sercarz

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1 had a common client that I was friendly with. They were the
2 attorneys for the Lutheran Synod. Lutheran Synod probably has
3 about two or 300 churches in the northeast and they asked me
4 if I would be interested in being a real estate consultant to
5 the Synod.

6 Q Let me just stop you there to make the point --

7 A Sure.

8 Q -- or ask the question.

9 The time the Lutheran Synod approached you, they
10 were already represented by Counsel; is that correct?

11 A Yes, the firm of Capell Barnett.

12 Q C-A-P-E-L-L?

13 A Yes.

14 Q All right.

15 A Mr. Capell had been Synod's attorney probably for
16 thirty years.

17 Q And you just indicated that they wanted you to be a real
18 estate advisor; is that correct?

19 A Yes.

20 Q That would have been a nonlegal piece of work; is that
21 correct?

22 A Correct.

23 Q What did they want you to do for them?

24 A The church, the Synod, had many, many churches in areas
25 throughout the City in particular, some on Long Island that

Hymowitz - direct - Sercarz

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1 for no better term would be underperforming. The size of the
2 congregation had gotten so small that the congregants could
3 not afford to keep the church going, so the church was looking
4 for alternatives as to what to do with church property.

5 Q Were they seeking your guidance?

6 A Yes.

7 Q On what to do with church property?

8 A Yes.

9 Q Did you ever discuss that work with Mr. Starzecki?

10 A Oh, absolutely.

11 Q Just briefly, were you also involved in projects at
12 Albany and Herkimer in Brooklyn?

13 A Yes, there were two projects there.

14 Q All right. Were you involved as a lawyer, as a real
15 estate advisor or both?

16 A In that situation, I would have been both.

17 Q All right. What were they doing over there? What was
18 that project about, just briefly?

19 A The first project I was involved with was on Herkimer,
20 right down the street from, I think that's Brooklyn Hospital.
21 Clients wanted to build six three-family homes there. They
22 did not have any skills in that area. They retained, they
23 retained me. I got them bank financing for the project. They
24 had already had a builder in place.

25 And what I did after closing on the construction

Hymowitz - direct - Sercarz

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1 loan, my job would be to come to the site on a fairly regular
2 basis to make certain that the builder was doing what he was
3 supposed to do and then, after the project was built, I did
4 the closings on the homes.

5 Q Do you recall whether the subject of that project came up
6 in any of your conversations with Mr. Starzecki?

7 A It was a small project and possibly in just passing. And
8 that was in 2004.

9 Q Were you engaged in any real estate development projects
10 on Staten Island?

11 A I still had another project with the same people in
12 Brooklyn.

13 Q I'm sorry, go ahead and tell us about that one.

14 A The clients had a very large piece of property which
15 their business was operating out of and that was starting in
16 about 2005. They were interested in developing that property
17 and building a high-rise condominium.

18 They retained my services to assist them in doing
19 that and that, I know for certain, that I spoke to
20 Mr. Starzecki about.

21 Q Were you retained as a real estate advisor, as a lawyer
22 or in some other capacity?

23 A In all of those capacities.

24 Q All right. Were you involved in 2005-2006-2007 in any
25 real estate development projects on Staten Island?

Hymowitz - direct - Sercarz

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1 A Yes.

2 Q Again, briefly, tell the Ladies and Gentlemen of the Jury
3 what that was about.

4 A There was a gentleman in Staten Island who owned seven
5 acres of land on the water in Staten Island. I had met him in
6 2001 for the purposes of giving him mortgages to develop his
7 property. He had a marina there, we lent him some money to
8 build a marina.

9 We lent him some money to build a restaurant on the
10 property and, as a result of that, we became friendly. He
11 asked me to get involved with him to help him develop a major
12 project there.

13 Q As a lawyer, as a real estate advisor or in some
14 additional capacity?

15 A Up to that point, I was not his attorney, he had separate
16 Counsel. In 2006 I took over both being -- assisting him in
17 developing. And then, all of the work that would be involved
18 in developing that was legal, I would have done that as well.

19 Q Without going into the detail, were there other real
20 estate projects in which you were involved, either as an
21 attorney, as a developer or in some other capacity in 2006 and
22 2007?

23 A The answer is yes. My whole practice was representing
24 owners of real estate, developers. So, yes.

25 Q And did you discuss these projects in 2006 and in 2007

Hymowitz - direct - Sercarz

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1 with Bogdan Starzecki when you encountered him either at your
2 office or at a closing or elsewhere?

3 A Sure, many times.

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5 (Continued on following page.)

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Hymowitz - direct - Sercarz

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1 BY MR. SERCARZ: (Continued)

2 Q Did there come a time in January of 2007 when you
3 received a telephone call from your partner Mike Freeman?

4 A Yes.

5 Q All right. By the way, before we get there, did
6 Mr. Starzecki at any time prior to January 2nd of 2007 speak
7 to you specifically about retaining you in connection with
8 outside work?

9 A Yes.

10 Q What did he say to you as best you recall?

11 A It was actually at the Bed-Stuy closing in 2006.

12 MS. POSA: Objection.

13 THE COURT: Sustained.

14 MR. SERCARZ: May we approach?

15 THE COURT: Yes.

16 (Continued on next page.)

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Side Bar

1933

1 (The following occurred at side bar.)

2 MR. SERCARZ: I offered it not for the truth of the
3 matter asserted, but for the effect on the listener, in this
4 case, Mr. Hymowitz, and I'm willing to accept an instruction
5 to that effect.

6 MS. POSA: We would ask for an instruction to that
7 effect.

8 THE COURT: What instruction would you like me to
9 give?

10 MS. POSA: Simply what he's going to say regarding
11 Mr. Starzecki's alleged statement should not be considered for
12 its truth, but for the effect that it may have had on
13 Mr. Hymowitz.

14 THE COURT: Okay.

15 (Side bar ends.)

16 (Continued on next page.)

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CMH

OCR

RMR

CRR

FCRR

Hymowitz - direct - Sercarz

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1 (In open court.)

2 THE COURT: Members of the jury, again, I am going
3 to give you an instruction about testimony that you are going
4 to hear. The attorney, Mr. Sercarz, is asking questions of
5 Mr. Hymowitz as to conversations that Mr. Hymowitz said he had
6 with Mr. Starzecki.

7 I will allow Mr. Hymowitz to testify about those
8 conversations, but I want you to understand that the comments
9 by Mr. Starzecki are not being offered for their truth and
10 should not be considered by you for their truth. You should
11 consider them only with respect to what effect they may or may
12 not have had on Mr. Hymowitz who is testifying.

13 BY MR. SERCARZ:

14 Q As best you can recall, recount for the jury the
15 conversation that you had with Mr. Starzecki at the Bed-Stuy
16 closing.

17 A As usual at these closings, there's a tremendous amount
18 of downtime. There are documents that have to be signed from
19 HPD, from the bank, from HUD, and there's a lot of time lapses
20 in between getting all the different parties in. So there's
21 always a lot of time for us to sit around and talk.

22 During one of those conversations, I don't remember
23 the exact words, but it was something to the effect that I
24 need to get you to start working for me, something to that
25 effect.

Hymowitz - direct - Sercarz

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1 Q Is that the gist of the conversation? Was there much
2 more to it than that?

3 A No. I said whenever you're ready. That was basically
4 it.

5 Q Now, did there come a time in or about early 2007 when
6 you received a telephone call from your partner Mike Freeman?

7 A Yes.

8 Q At the time you received the call, were you in the
9 office?

10 A Yes.

11 Q Was Mike Freeman in the office or was he out of the
12 office?

13 A Out of the office.

14 Q Please tell the ladies and gentlemen of the jury what
15 Mr. Freeman said to you during that conversation.

16 A Mr. Freeman told me that --

17 MS. POSA: Objection.

18 THE COURT: Sustained.

19 MR. SERCARZ: Your Honor, I would like the same
20 instruction, same purpose.

21 MS. POSA: Your Honor, may we have a very brief side
22 bar?

23 THE COURT: Yes.

24 (Continued on next page.)

25

Side Bar

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1 (The following occurred at side bar.)

2 MS. POSA: Mr. Sercarz just said the last statement
3 was going to be for the effect on the listener. There's no
4 effect on the listener. He testified to Mr. Starzecki's
5 statement so that is the end. So I would like to have a
6 proffer on what the effect to the listener might be here.

7 MR. SERCARZ: My pleasure.

8 The Court and the government will no doubt recall
9 that Mr. Starzecki testified that he had a conversation with
10 Mike Freeman in early 2007 in which he said, I want to put
11 money in your firm. That was his version of the conversation.

12 There's no testimony in this case that my client
13 spoke to Mr. Starzecki. My client did speak to Mike Kramer
14 and the conversation that he had with Mike Kramer was
15 Mr. Starzecki wants to retain our firm, \$100,000, for a year.
16 Mr. Hymowitz is going to testify that in response to that,
17 and --

18 THE COURT: That this was what Freeman said to him?

19 MR. SERCARZ: Yes. And in response to that, my
20 client drew up the retainer agreement or at least some form of
21 the retainer agreement that comes into evidence.

22 THE COURT: Counsel, the traditional way this
23 happens, when it's hearsay, is that the question you ask is
24 did you get a phone call, yes, I did, and did you do anything
25 after you got the phone call, not getting in hearsay which is

Side Bar

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1 what you did with Mr. Starzecki. The government said an
2 instruction is okay, but normally we don't give instructions
3 and then let all the hearsay in. That's not the way it is
4 done and this is a co-defendant.

5 MR. SERCARZ: With all due respect, Your Honor, I
6 would make the observation that I don't know as I stand here
7 whether what Mr. Freeman said to Mr. Hymowitz on the phone was
8 true, whether it was an accurate recounting of what he had
9 heard from Mr. Starzecki.

10 THE COURT: So why should we present this to the
11 jury?

12 MR. SERCARZ: Because, because it goes to my
13 client's state of mind. My client undertook certain conduct
14 based on what he heard.

15 THE COURT: What I have just proposed is sufficient
16 based --

17 MR. SERCARZ: I'll do it your way.

18 THE COURT: I think my way is the fair way.

19 MR. SERCARZ: And that's the way I will do it. I
20 don't want to be in that mythical doghouse, Your Honor.

21 MS. POSA: With Edwina.

22 (Side bar ends.)

23 (Continued on next page.)

24

25

CMH

OCR

RMR

CRR

FCRR

Hymowitz - direct - Sercarz

1938

1 BY MR. SERCARZ:

2 Q Mr. Hymowitz, we were at the point where would were
3 discussing the fact that you received a telephone call from
4 Mr. Freeman in early 2007 and Mr. Freeman was out of the
5 office. Do you recall that?

6 A Yes.

7 Q Don't tell me what was said in that conversation. After
8 speaking to Mr. Freeman and in response to that conversation,
9 did you do something?

10 A Yes.

11 Q What did you do?

12 A I started to prepare a retainer.

13 Q What did you understand the terms of the retainer to be?

14 A That MCR Restoration was retaining our firm for one year
15 and they were going to pay us \$100,000.

16 Q And for what purpose were they, were they retaining your
17 firm?

18 A I knew what Mr. Starzecki had asked me to do and also I
19 knew that we would do whatever legal work that we could do
20 that would not be a conflict with me getting him any possible
21 bids on jobs.

22 Q I'd like to show you what is already in evidence as
23 Government's Exhibit 600.

24 MR. SERCARZ: If I could have some help, Victor.

25 (Exhibit published.)

Hymowitz - direct - Sercarz

1939

1 Q Before I go about asking you about this document, how did
2 you go about drafting the retainer in response to the limited
3 amount of information that you had?

4 A I went into the computers and I found a template that
5 Mr. Freeman would use normally for his client's retainers.

6 Q All right. Why one of Mr. Freeman's templates rather
7 than one of yours?

8 A I do almost no work that I prepare retainers for. As a
9 transactional attorney, all of my legal work is on a fixed
10 numbers. Sort of the way I can explain it is if someone is
11 going to buy a house or sell a house, you know, they call an
12 attorney and say how much does it cost to do my closing and
13 you're given a number and that's it. It's not hourly. It's
14 nothing like that except I'm doing much larger work. I'm
15 representing people buying and selling apartment houses,
16 shopping centers, office buildings. We negotiate an upfront
17 price and that's what I do the work for.

18 Q I call your attention to Government's Exhibit 600 which
19 is in evidence.

20 Do you recall drafting any portion of this document?

21 A The only portions that I am positive that I did at this
22 point would be the \$100,000 and the one year.

23 Q Do you remember when it was that you drafted what
24 eventually became the retainer agreement?

25 A It was late morning of January 2nd.

Hymowitz - direct - Sercarz

1940

1 Q January 2, 2007?

2 A Yes.

3 Q The date that appears on the front?

4 A Yes.

5 Q How do you recall that it occurred on January 2, 2007?

6 A That holiday season was a very unusual season for me. My
7 wife being a first grade school teacher, we usually take off
8 about ten days because she's off for Christmas through New
9 Year's. Instead, that Christmas, one of my clients had to
10 close a \$39 million construction loan and I had to work
11 through the holidays and we closed it on December 27th so I
12 didn't get a vacation. And after the closing, I left the
13 closing, had all the files, several trans files sent back to
14 the office, and when I got back after the holiday, they were
15 sitting back on the side of my desk and later that morning, I
16 received a phone call.

17 Q You have a recollection of the files in your office at
18 the time you received the call, is that the idea?

19 A Yes.

20 Q And do you recall about how much time you spent drafting
21 this document?

22 A Between the phone call and the drafting, it couldn't have
23 taken more than 10 to 15 minutes.

24 Q Let me show you page two of the document.

25 The top paragraph makes reference to the payment of

Hymowitz - direct - Sercarz

1941

1 disbursements. Do you see this language? Directly as they
2 are incurred, or to reimburse our firm for all costs advanced
3 and expenses incurred, that are directly related to the
4 performance of the legal services undertaken.

5 Do you see that paragraph?

6 A Yes.

7 Q These include such out-of-pocket expenses as service of
8 process, filing fees, travel, messengers and other such costs
9 and disbursements incurred on your behalf.

10 A Yes.

11 Q Would there ever have been service of process in
12 connection with the retainer agreement you had in mind?

13 A Not what I was going to be involved with, no.

14 Q Does it appear that this was language you drafted or that
15 this was from what I will call the Freeman template?

16 A That's definitely from the template.

17 Q All right. The next paragraph. There is the possibility
18 that the services of experts may be required for the proper
19 representation in your matters. The fees and costs due and
20 payable for the services of such experts will be payable by
21 you in advance. No expenses of this type, however, will be
22 incurred without your prior approval.

23 Did the document that you were drafting and the work
24 that you planned to do contemplate the use of experts of any
25 kind?

Hymowitz - direct - Sercarz

1942

1 A No.

2 Q The next paragraph, the language about, Statements of
3 your account will be sent to you on a regular basis and at
4 least every 60 days. The statements will reflect the amount
5 of time spent on your case, and the sums due and owing to this
6 office in the event your retainer has been exhausted.

7 Did this paragraph and the language that followed
8 reflect your customary billing practices?

9 A No, I never billed out on an hourly basis. I never sent
10 bills.

11 Q With regard to the next paragraph, Disbursements are to
12 be paid directly, or reimbursed to our firm if we advance them
13 on your behalf, upon your receipt of our bill for the same.
14 Disbursements are not legal fees and are not deductible from
15 your retainer.

16 Did the work you were planning on doing for
17 Mr. Starzecki contemplate disbursements?

18 A No. This is all part of the template.

19 Q The next paragraph. Billable rates set forth in this
20 agreement will not increase during the period we represent
21 you, even in the event of a general increase in this firm's
22 rates. In addition, this retainer agreement can only be
23 amended by a subsequent written agreement signed by each of
24 us.

25 Did the retainer agreement which you were drafting

Hymowitz - direct - Sercarz

1943

1 contemplate an hourly rate or other structured fee rate other
2 than the \$100,000 which is referred to at the front of the
3 document?

4 A No.

5 Q Is this part of the template?

6 A Yes.

7 Q The next two paragraphs, Affording the client the right
8 to contact the office and to keep regularly apprised of the
9 status of your matters, is this something that you drafted or
10 was this part of the template as well?

11 A This is all part of the template.

12 Q All right. With regard to page one, the paragraph, It is
13 agreed that our firm will represent your corporation for all
14 legal services required in the 2007-year, is that something
15 you drafted?

16 A Probably.

17 Q But you have no precise recollection?

18 A No, not at all.

19 Q Is that correct?

20 A Not at all.

21 Q And the next paragraph. A retainer in the amount of
22 \$100,000 is hereby requested. This retainer will be credited
23 to your account and will be applied against legal fees
24 incurred on your behalf.

25 Did you draft that?

Hymowitz - direct - Sercarz

1944

1 A I didn't draft the paragraph. I just put the number in.

2 Q Do you have any specific recollection of whether you
3 included the language, This retainer is nonrefundable?

4 A No, not at all.

5 Q Again, in total, how much time do you estimate you spent
6 in taking the template and incorporating language?

7 A Ten or 15 minutes, the whole thing.

8 Q Had you had any conversation with Bob Starzecki regarding
9 the precise terms of this retainer before at Mike's request
10 you put together your version of the draft?

11 A No.

12 Q What do you recall doing with the draft when you got
13 done?

14 A Putting it in Michael's office.

15 Q And why did you do that?

16 A It was not a finished product and I had not spoken to the
17 clients so I didn't know all the terms.

18 Q Is that the last you recall seeing of that document?

19 A I never saw the retainer again, no.

20 Q Incidentally, in your firm, when checks come in in the
21 mail, who opens the mail?

22 A The secretaries.

23 Q And by the way, I should make it clear I'm talking about
24 approximately 2006, 2007.

25 A Correct.

Hymowitz - direct - Sercarz

1945

1 Q The secretaries?

2 A Yes.

3 Q And when there are checks that need to be deposited into
4 the bank, whose responsibility is that?

5 A The secretaries'.

6 Q Do you have any recollection of receiving a check on
7 January 31st of 2007 made payable to Haymowitz,

8 H-A-Y-M-O-W-I-T-Z, and Freeman, in the amount of \$34,5000?

9 A No. The first time I heard of that was when I spoke to
10 FELA Agent Richards.

11 Q In the aftermath of having drafted the retainer, did you
12 recommend Mr. Starzecki on any private jobs?

13 A Yes.

14 Q Mr. Starzecki testified to having received a package in
15 connection with the Lutheran Synod. Do you recall that
16 testimony?

17 A Yes.

18 Q Do you know what he was referring to?

19 A Yes.

20 Q Tell the ladies and gentlemen of the jury what he was
21 referring to.

22 A That particular incident was the Lutheran Synod had
23 decided to demolish a church on 119th Street in Manhattan. We
24 were going to build a new church on the basement and first
25 floor and I think mezzanine and then build condos above it.

Hymowitz - direct - Sercarz

1946

1 We had a full set of building plans approved by the Building
2 Department and I called Bob Starzecki up to see whether he was
3 interested in bidding. He came running down to the office
4 immediately. I gave him a set of plans.

5 Q Did Mr. Starzecki, to your knowledge, bid on that part of
6 the project?

7 A No, he did not. There was a bidding process not as
8 formal as what we referred here but our little committee sent
9 out I think about five different builders. I told Bob that he
10 had two weeks to get me back numbers. He never did that and
11 maybe a month or so later, he returned the plans.

12 Q Were there other instances in which you recommended
13 Mr. Starzecki on projects in which he had some involvement?

14 A Yes, Lutheran Synod. Again, there was a demolition that
15 had to be done of a church and that was before these set of
16 plans that Mr. Starzecki had mentioned. I had called Bob up
17 and I said, Bob, we have a small demolition project that needs
18 to be done, I've got some other quotes, this would be an
19 excellent opportunity for you to come in, hopefully come in
20 with a good bid and then you can be recognized by the Synod
21 and possibly get other work from them.

22 Q Did that conversation result in a successful bid by
23 Mr. Starzecki?

24 A No. Actually his bid, if I recall correctly, was about
25 25 percent higher than the other bid that I had and we gave it

Hymowitz - direct - Sercarz

1947

1 to somebody else.

2 Q Were there other conversations, without telling me what
3 was said, involving real estate development projects other
4 than the Lutheran Synod?

5 A Sure. All of the other projects that we had just
6 discussed, they were in different phases of development and
7 the development process is a long process. It takes very, you
8 know, months. You interview architects, you get plans.

9 I would speak to Bob at different times about these
10 projects. I know on the Brooklyn project, the condominium
11 project in Brooklyn, we were up to the point where what, what
12 I do is what I call crunch numbers. I have to prepare numbers
13 to decide what the cost of the projects are, what we can sell
14 the project for and what the anticipated profit is. So what I
15 need to do is get numbers from builders as to what they would
16 envision the cost of building would be per square foot. So I
17 spoke to Bob and he gave me some numbers on that and I plugged
18 those into my projections.

19 Q Did any of the conversations you had with Mr. Starzecki
20 or the bids that he made after January of 2007 result in any,
21 the generation of any legal work for your firm?

22 A No.

23 Q As a result, were there any billing records or records of
24 account that would have been sent to Mr. Starzecki in
25 connection with this retainer?

Hymowitz - direct - Sercarz

1948

1 A Not from me.

2 Q By the way, can you tell the ladies and gentlemen of the
3 jury what the state of the economy was in real estate
4 development work in New York during the latter part of 2007
5 and 2008?

6 A I sort of have to back up. 2006 and 2007, the real
7 estate market was as strong as it's ever been and then
8 starting towards the very end of 2007, beginning of 2008, the
9 bottom dropped out. It was all that Fannie Mae, Freddie
10 Mac -- real estate just stopped completely. Property values
11 went down probably 20, 30 percent almost immediately.

12 Q When do you last recall speaking to Mr. Starzecki?

13 A Probably early 2008 and that's because at the end of
14 2007, I left the New York office and probably around November
15 of 2008, one of our clients had some business difficulties.
16 He owned a bank out in Long Island and he had some trouble
17 with his partners and asked me to come out and assist him. So
18 from late 2007 until the end of 2009, I only came back into
19 the City from time to time to handle, you know, some of my
20 clients, but I would say other than three or possibly four
21 days a month, I spent working out of Long Island doing banking
22 stuff.

23 MR. SERCARZ: Your Honor, may we approach very
24 quickly?

25 THE COURT: Yes.

Side Bar

1949

1 (The following occurred at side bar.)

2 MR. SERCARZ: I intend, I intend to ask Mr. Hymowitz
3 a series of questions about the telephone calls, the tapes of
4 which are in evidence. For ease of examination, I'd like to
5 be permitted to use the transcripts to ask the questions even
6 though they're not in evidence. Just making sure.

7 THE COURT: They're only not in evidence because you
8 didn't want them to be in evidence.

9 MR. SERCARZ: And I don't.

10 THE COURT: If you want them to be in evidence,
11 they're in evidence.

12 MR. SERCARZ: In any event, if there's no objection,
13 I'd like to use the transcripts.

14 THE COURT: I assume there's no problem.

15 MS. POSA: The transcripts that are marked, right?

16 MR. SERCARZ: Your transcripts.

17 (Side bar ends.)

18 (Continued on next page.)
19
20
21
22
23
24
25

Hymowitz - direct - Sercarz

1950

1 BY MR. SERCARZ:

2 Q Mr. Hymowitz, I'd now like to ask you a series of
3 questions about the telephone calls that were recorded by the
4 government in October of 2011. All right?

5 A Okay.

6 Q And just by way of reminder, you say you last spoke to
7 Mr. Starzecki in 2008, is that correct?

8 A Yes, probably about three and a half years before I had
9 that phone conversation with him.

10 Q All right. And the events that were discussed in this
11 telephone call occurred in or about early 2007, is that
12 correct?

13 A No -- oh, this? Yes. January 2nd, yes.

14 Q And in the interim, you had actually moved out of your
15 office for a period of time and worked at the office of a
16 client, is that correct?

17 A Yes, from the end of 2007 until all of 2008 and all of
18 2009.

19 Q All right. And had the Hymowitz & Freeman law firm
20 actually moved its offices in 2011 as well?

21 A We moved our offices, I think, June of 2011. We moved
22 from the office that we're in for about 30 years. We moved a
23 few blocks over. They turned our building into a condo.

24 Q All right. I'm going to call your attention to
25 Government's Exhibit 5 and to the transcript which is

Hymowitz - direct - Sercarz

1951

1 Government's Exhibit 5T and the transcript is an aid, as I
2 understand it.

3 (Exhibit published.)

4 Q All right. With regard to clip A of that conversation,
5 I'm going to call your attention to a line that I've
6 highlighted where Mr. Starzecki asks you: Do you remember we
7 did have that retainer with you guys a while ago? And you
8 answered: No.

9 When Mr. Starzecki first called you, did you have
10 any recollection of the retainer agreement?

11 A No. I mean, I hadn't spoken to him in years and just
12 didn't ring a bell to me.

13 Q All right. And under clip B -- let me just take it out
14 of the binder and make it easier.

15 When Mr. Starzecki said to you: Well, this is
16 basically what they are telling me. And the retainer, it is
17 for real estate deal. They are saying that there need to be
18 some kind of detailed invoice how the fees were disbursed.

19 When he used the word "real estate" to you in this
20 conversation, did this suggest to you that he was talking
21 about the Bedford-Stuyvesant project?

22 A No. It suggested what I just discussed with you.

23 (Continued on next page.)
24
25

Hymowitz - direct - Sercarz

1952

1 BY MR. SERCARZ:

2 Q In clip C, in response to questions about documentation,
3 do you recall saying, Once an invoice is paid, it's just
4 ripped out of the book appear disposed of, so we don't keep
5 any of those types of things?

6 A Yes.

7 Q Were you testifying as to your general practice, or as to
8 what you did with regard to any billing information generated
9 by this retainer?

10 A That's what I generally did.

11 Q And the best of your recollection, was there ever any
12 bill information generated by this retainer?

13 A No.

14 Q Again, the reason why is?

15 A There was nothing to bill for.

16 Q Now, do you recall that thereafter, you had a
17 conversation with Special Agent Richards on the same day,
18 October 3, 2011?

19 A Yes, I did.

20 Q Do you recall acknowledging, in your conversation with
21 Agent Richards, "Back then, I remember being asked to prepare
22 a retainer agreement. I did that, and we have a check. What
23 I told Bob is that they don't keep records with regard to
24 billing once things are paid. We send a bill, and we have a
25 book, like a looseleaf. Once it's paid, we rip it out of the

Hymowitz - direct - Sercarz

1953

1 book and dispose of it. I don't have any. I said to him, I
2 don't know how to come up with preparing a document that would
3 be able to break anything down. I have no clue."

4 Do you see that.

5 A Yes.

6 Q Were you speaking to Agent Richards about that particular
7 agreement, or about your general practice in the firm, at
8 least when it comes to the first few sentences?

9 A It's my general practice in the firm.

10 Q With regard to the statement that you made -- "I don't
11 know how to come up with preparing a document that would be
12 able to break anything down. I have no clue" -- to what were
13 you referring at that time?

14 A Bob had asked me to prepare some sort of documents to
15 assist him with the IRS, and I didn't want to prepare
16 something that was inaccurate, so I told him I had no clue how
17 to help him out.

18 Q Later on in the conversation, the following ensued: "So,
19 your records" -- this is Agent Richards -- "you don't have
20 any kind of documentation? I know from just being in this
21 line of work that attorneys are to keep records for a certain
22 number of years after they..."

23 And you interrupted and said: "Not billing
24 records?"

25 Agent Richards said: "No."

Hymowitz - direct - Sercarz

1954

1 And you said: "As far as I know, if we're supposed
2 to, we never did."

3 Do you see that sentence.

4 A Yes.

5 Q Was it your general practice, with regard to your bills
6 in or about 2007, that once an invoice was paid, it was ripped
7 out of the looseleaf --

8 A Yes.

9 Q -- and that those were the only billing records that
10 were kept until they were ripped out?

11 A For me, yes.

12 Q That was your practice?

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q You're not talking about Mr. Freeman's practice, you are
17 talking about your practice?

18 A Mr. Freeman has a totally different practice than I do.

19 Also, what you have to understand, since most of my
20 work are things like closings and things of that nature, I
21 typically get paid at the end of the closing from a bank.
22 There's a closing statement that we do at the bank. There's a
23 checklist that is handed out at the closing. The client
24 approves all of the checks. He signs the bottom of the check
25 list, and my fee is on that. It's just a flat fee, as we

Hymowitz - direct - Sercarz

1955

1 discussed before.

2 Q All right. I want to deal with some odds and ends that
3 have arisen in the testimony?

4 There was testimony regarding a conversation that
5 you had with Wendell Walters.

6 A Yes.

7 Q Concerning a loan?

8 A Yes.

9 Q Do you recall that?

10 A Yes, very much.

11 Q And that conversation took place in or about 2002 or
12 2003; is that correct?

13 A 2003, I believe.

14 Q I believe Mr. Walters testified that he called at the
15 suggestion of Stevenson Dunn. Do you recall that?

16 A Yes.

17 Q Now, when you spoke to Mr. Walters, did he tell you that
18 he was borrowing -- seeking to borrow money on his own behalf?

19 A No. He told me --

20 MS. POSA: Objection.

21 THE COURT: Sustained.

22 MR. SERCARZ: May we approach?

23 (Sidebar.)

24 MR. SERCARZ: Mr. Walters put a version of this
25 conversation -- the government, through the testimony of

Hymowitz - direct - Sercarz

1956

1 Mr. Walters, put a version of this conversation on the record,
2 and my client has a different recollection.

3 It is not being offered for the truth. I submit
4 that under these unique circumstances, I should be allowed to
5 obtain my client's best recollection of what was said. If I
6 can't do that, I'll ask the questions about his impression,
7 your Honor. But I think in this instance, I should be allowed
8 to do it.

9 MS. POSA: If he's trying to bring this in as a
10 prior consistent statement, there is an obligation to confront
11 the witness. Mr. Walters was not confronted by you about the
12 content of this conversation. He was not able to rebut it in
13 terms of it being inconsistent.

14 MR. SERCARZ: The rules of prior inconsistent
15 statements apply when the same witness has offered a version
16 of the conversation which is different on a prior occasion.
17 This is not a prior inconsistent statement by Mr. Walters.
18 This is someone else's recollection of the same conversation.
19 I don't believe the same rules apply.

20 MS. POSA: You're not bringing --

21 THE COURT: Excuse me. Is there any nonhearsay way
22 that this statement of what Walters said to your client can
23 come in? You had Walter on the stand. You were free to
24 cross-examine him any way you wanted to. I don't understand
25 how your client can put on what he wants to say.

Hymowitz - direct - Sercarz

1957

1 MR. SERCARZ: Because Walter was speaking to him.
2 He has a different recollection of the conversation, your
3 Honor. And just as Walter was allowed to testify to a prior
4 out-of-court conversation that he allegedly had with my
5 client --

6 THE COURT: It was an admission by your client, and
7 it's not hearsay under our rules.

8 MR. SERCARZ: Most respectfully, our version of the
9 conversation would make it clear that there was no admission.
10 There was no wrongdoing.

11 THE COURT: It's an admission by a defendant. The
12 term "admission" really has nothing to do with its culpability
13 or not. It can be offered by the government against him if
14 they want to argue it shows culpability.

15 MR. SERCARZ: From an evidentiary standpoint --

16 THE COURT: That's what we're talking about,
17 evidence.

18 MR. SERCARZ: I don't see any difference between
19 this and Mr. Dunn being permitted to testify as to what he did
20 or did not say to the agent, when the agent offers it as an
21 admission, but he has the same opportunity to say, I recall
22 saying that. I never said that, or something else.

23 THE COURT: Your client can say what he said. You
24 can ask him anything you want about what he said to Walters.
25 I just don't think that under the Rules of Evidence, you're

Hymowitz - direct - Sercarz

1958

1 entitled to get his version of what Walters said to him. You
2 had Walters on the stand, and that's it.

3 MR. SERCARZ: So my record is clear, and I will
4 abide by the Court's ruling, I'm not offering for the truth of
5 the matter asserted of what Walters said. Okay.

6 (In open court.)

7 BY MR. SERCARZ:

8 Q After you spoke with Mr. Walters -- was it over the
9 phone, by the way?

10 A Yes.

11 Q -- without telling us what was said, did you form an
12 impression as to what it was that Mr. Walters wanted?

13 A Yes.

14 Q What was your impression as to what Mr. Walters wanted?

15 A He was seeking a --

16 MS. POSA: Objection.

17 THE COURT: Overruled.

18 A He was seeking a loan for a friend of his to renovate a
19 brownstone in Harlem.

20 Q During the course of this conversation, what did you say
21 to Mr. Walters?

22 A I told Mr. Walter I would call one of my clients who
23 owned property in Harlem, and see whether he was interested in
24 funding the loan.

25 Q If I understand you correctly, you did not offer to fund

Hymowitz - direct - Sercarz

1959

1 the loan, but you offered to have one of your clients do that;
2 is that correct?

3 A That's correct.

4 Q And the understanding that you had was that Mr. Walters
5 was seeking the money for a friend, not on his own behalf; is
6 that correct?

7 A That's correct. The property was owned in an LLC at the
8 time.

9 Q Did you indeed, in the aftermath of that call, contact
10 those of your clients that you felt might be interested in
11 loaning money?

12 A Yes, I did.

13 Q Did they discuss with you the terms under which they
14 would be willing to make such a loan?

15 A Yes, they did.

16 Q Do you recall anything about those terms?

17 A The exact terms I don't recall at this point, but
18 typically, it would be a one-year loan, and probably in the
19 vicinity of twelve to sixteen percent.

20 Q Why would the interest rate be so high?

21 A That is actually a standard rate for nonbank loans. But
22 more importantly, when -- going back to 2003 in Harlem, there
23 were a tremendous amount of boarded-up brownstones still. It
24 was just the beginning of the renaissance, and banks do not
25 lend money on buildings that are not in good shape. So, the

Hymowitz - direct - Sercarz

1960

1 only way that someone can really renovate their building is
2 either to apply for a special federal program, or to get
3 private money.

4 Federal programs take many, many months to apply for
5 and obtain. Lots of paperwork. If you own a building and
6 it's empty, you have the costs of real estate taxes,
7 insurance, heat, all of those types of things mounting up. If
8 you have a mortgage on the property from the time you bought
9 it, you are paying interest on it.

10 On a private loan, you would speak to me today. If
11 I had a client that was interested, the client would drive by
12 the property, say, Yes, we would order a title report; next
13 week, you would have your money. So, even though the interest
14 rate is high, when you take away all of those costs -- bank
15 points, bank legal, all of those types of things -- the
16 interest rate really isn't that much higher than a bank loan.

17 Q Did you offer Wendell Walters any sort of a special rate
18 on that mortgage different from the one that your clients were
19 quoting to you?

20 A No, not at all. In fact, he was offended at the rate.

21 Q Mr. Walters testified that you were present at a meeting
22 at the end of the Lexington project involving budget issues.
23 Do you recall that testimony?

24 A Yes. But it was not the end. It was the beginning.

25 Q Fair enough. Of the three members of the SML

Hymowitz - direct - Sercarz

1961

1 Corporation, who was it that had the most experience with
2 regard to budget issues?

3 A I was really the only one who had experience in that
4 field.

5 Q In order for you as counsel to be permitted to attend a
6 meeting at which budget issues were discussed, did you have to
7 acquire special permission?

8 A Yes.

9 Q Was that permission granted in order for you to attend
10 those meetings?

11 A I'm sure it was. I went to several of the meetings.

12 Q With regard to the Lexington Avenue project, to the best
13 of your knowledge, did Stevenson Dunn work as a subcontractor
14 for Mr. Starzecki on the Lexington project?

15 A I found out about it at some point. I think it was well
16 after, not while he was doing the work.

17 Q We saw as an exhibit in this courtroom an e-mail exchange
18 between you and a gentleman by the name of Magidson.

19 Do you recall that?

20 A Yes.

21 Q For the sake of moving things along, I'm not going to put
22 it to you right now, but do you recall the subject matter?

23 A Yes.

24 Q Do you remember which of the three projects was the
25 source of that e-mail exchange?

Hymowitz - direct - Sercarz

1962

1 A That was the Bed/Stuy project.

2 Q All right. What was going on at the time that those
3 e-mails were sent back and forth? Just briefly, where were
4 you in terms of the project?

5 A On the Bed/Stuy project, I did the construction loan
6 closing, and that was my last involvement in the project until
7 the project went into default. And when I say "default," I
8 think just the time frame in which the mortgage had to be
9 repaid had passed.

10 At that point, as Mr. Magidson said, for the first
11 time, I came in at that point. And what typically takes place
12 when a mortgage goes into default is, you try to have a
13 workout of the problem. And I got back involved.

14 I was speaking with somebody at the Enterprise -- I
15 have no idea at this point -- and we were trying to work out a
16 budget to go forward. One of the critical items was the
17 insurance payment. We had well over thirteen buildings whose
18 insurance was running out, and whoever I was speaking to had
19 promised if I got the insurance broker to send the bill, they
20 would take care of the payment. I had the insurance broker do
21 that, and the payment was not forthcoming.

22 Q Do you recall that the argument referenced in those
23 e-mails dealt with insurance?

24 A Yes.

25 Q Do you recall that you, in your e-mail to Mr. Magidson,

Hymowitz - direct - Sercarz

1963

1 referenced the fact that you had made representations
2 regarding the fact that the Enterprise would pay off the
3 insurance broker?

4 A Yes.

5 Q You felt that those representation were not being
6 honored; do you recall that?

7 A Yes.

8 Q And in response to that, Mr. Magidson began his e-mail by
9 saying, in words or substance -- and I'm sure the government
10 can put it on the screen when they examine you -- I'm not sure
11 whether you are acting as the partner or on your own behalf;
12 do you recall that response to the e-mail?

13 A Yes.

14 Q Did you make any effort to deceive Mr. Magidson as to
15 your role in connection with that project?

16 A Not at all. Everyone knew my relationship to Michael as
17 his law partner.

18 Q Now, in connection with the Hancock cluster, the
19 government put on the screen the opinion letter of counsel.
20 Do you recall that?

21 A Yes.

22 Q And you were the attorney and you signed that letter; is
23 that correct?

24 A Yes.

25 Q And among the other things you represented was that you

Hymowitz - direct - Sercarz

1964

1 had no ownership interest, no direct ownership interest in the
2 SML; do you recall that?

3 A That's correct.

4 Q The government then showed you a bank signature card. I
5 believe it's Government Exhibit 522.

6 MR. SERCARZ: Would the government have a hard copy
7 in court, by any chance? If not, we can put it up on the
8 computer. Thank you.

9 Q I would like you to take a look at this for me, if you
10 can.

11 THE COURT: Look at the screen, please. It's not
12 on.

13 THE WITNESS: Here we go.

14 Q Now, do you recall when you signed this card as vice
15 president? And here is your signature below.

16 A Yes.

17 Q Being vice president makes you an officer; is that
18 correct?

19 A Correct.

20 Q Of the SML?

21 A Yes.

22 Q Do you recall what the requirement of the bank was with
23 regard to how many people had to sign checks from the SML?

24 A If I could just correct you. It was for Bedford
25 Stuyvesant, not for Hancock, like you said.

Hymowitz - direct - Sercarz

1965

1 Q I'm sorry?

2 Do you recall how many individuals had to sign
3 checks?

4 A The reason that I signed is that at that time, Michael
5 and Steve wanted two people to sign for any checks that were
6 greater than \$1,000.

7 Q Was this a bank requirement, or was this something
8 Michael and Steve want?

9 A Michael and Steve.

10 As a result of that, Steve was always doing a lot of
11 traveling, and we envisioned times that perhaps Steve or
12 Michael would not be available and that checks might have to
13 be signed. So, I was put on as a vice president, because they
14 both relied on me. I had never signed any checks.

15 Q Do you see the line on the business signature card next
16 to the typewritten statement, "Number of signatures required"?

17 A Yes.

18 Q And can you read for the ladies and gentlemen of the jury
19 what that says?

20 A "One signature under thousand dollars; two signatures
21 over a thousand dollars."

22

23 Q With regard to the Hancock cluster, did Stevenson Dunn
24 ever discuss with you any effort by George Armstrong and
25 Wendell Walters to extort money from him or the SML?

Hymowitz - direct - Sercarz

1966

1 A No, not at all.

2 MR. SERCARZ: Your Honor, before the next line of
3 questioning, I think I need to approach for some ground rules.

4 THE COURT: All right. Why don't we take our
5 morning recess now.

6 Members of the jury, you can step out.

7 Remember not to discuss the case.

8 (Jury excused.)

9 THE COURT: Counsel, we'll take ten minutes.

10 (Recess taken.)

11 (Continued on next page.)

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Proceedings

1967

1 (In open court.)

2 (Judge NINA GERSHON enters the courtroom.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Can we begin?

5 MR. SERCARZ: Your Honor.

6 THE COURT: Yes.

7 MR. SERCARZ: The defendant's two character
8 witnesses were asked hypothetical questions which clearly
9 emanated from a dispute involving the family names Sicignano.
10 The Government has told me they have a rebuttal character
11 witness, Dorothy Sicignano, who they intend to call.

12 Under those circumstances I would request that I be
13 permitted to inquire of this witness regarding the
14 circumstances surrounding the dispute with Sicignano at this
15 stage rather than having to await some rebuttal character
16 evidence and call my client back to the witness stand. I
17 think enough of it is on the record so that it is within the
18 proper scope of the direct examination.

19 That's my application.

20 MR. CAPOZZOLO: The witnesses were asked the
21 question, they said no. That has a certain evidentiary
22 impact. I can't assume that those facts are true and I
23 couldn't argue that to the jury right now.

24 If Mr. Hymowitz wants to get into the underlying
25 facts about it, then that, to me, opens the door about those

Proceedings

1968

1 facts and if the character witness testifies, should be able
2 to talk about it.

3 I had planned to call Mrs. Sicignano simply to say
4 you've known him related to a real estate property, for how
5 many years, and have you formed an opinion about his
6 truthfulness.

7 At that point, if Mr. Sercarz did not do what he is
8 planning on doing, I would be stuck with that and in front of
9 the jury we would not make any argument about the underlying
10 lawsuit, just simply to say the character witnesses don't know
11 about that, that demonstrates that the value of that evidence
12 may be not complete and therefore, when the defendants argue
13 it is not in their nature to commit the crime, they may not be
14 able to truly say that and that the evidence doesn't have that
15 value.

16 But if Mr. Hymowitz wants to talk about the
17 underlying facts, then that opens the door to it and changes
18 what the Government would be able to do in our position.

19 THE COURT: All right. And you are saying that you
20 are proffering the character witness? And the basis for her
21 knowledge, his character is what?

22 MR. CAPOZZOLO: Her opinion is that for 20 years
23 she's been in an ongoing business relationship with
24 Mr. Hymowitz involving a property called 510 Gates Avenue and
25 that during the course of that, she's had opportunity to deal

Proceedings

1969

1 with him face-to-face, have conversations with him and based
2 on those interactions and other related interactions with
3 people involving that, that she's formed an opinion about his
4 truthfulness.

5 THE COURT: Which is?

6 MR. CAPOZZOLO: Not good. She does not find him
7 either truthful or generous.

8 THE COURT: And that's it?

9 MR. CAPOZZOLO: My understanding of the rules, I
10 understand, limits me to that. I am not allowed to get into
11 with a character witness the underlying facts.

12 MR. SERCARZ: I also understand the Government is
13 not seeking cross-examination my client regarding that
14 relationship under 404(b). They have made no application to
15 be allowed to do so.

16 MR. CAPOZZOLO: When a defendant testifies, it's not
17 404(b), it would be 608, I believe, as matters of
18 truthfulness. If Mr. Hymowitz, if he wants to question about
19 it, my only point --

20 THE COURT: No, Mr. Sercarz has asked whether if he
21 foregoes asking his client about it on direct, does that mean
22 you will also forego asking him about it on cross, and we can
23 get to things of greater materiality to this case, in my
24 opinion.

25 MR. CAPOZZOLO: My understanding is that the rule

Proceedings

1970

1 would allow some question about it, but we're stuck with the
2 answer and that it would only be for impeachment.

3 If Mr. Hymowitz would be testifying on direct as to
4 the truth of the matter, that then changes its value. This is
5 a little weird, but that's the way the character evidence
6 rules are and I had planned, as tempting as it would be with
7 Mrs. Sicignano, to limit her testimony to very brief because
8 of those rules.

9 MR. SERCARZ: Your Honor, I am not going to go into
10 it now. I will see what the cross-examination brings and if
11 necessary, I will make applications to recall witnesses and
12 the like, but I'm with you, I'm happy to get on to more
13 material things.

14 THE COURT: Let me just make sure I understand so we
15 don't have to stop again, to see what exactly Mr. Capozzolo is
16 proposing that he would ask of Mr. Hymowitz.

17 MR. CAPOZZOLO: It would be Ms. Posa.

18 THE COURT: Ms. Posa.

19 MS. POSA: Again, Your Honor, I'm simply doing this
20 under Rule 608(b). He is testifying and his credibility
21 should be tested just as the credibility of any witness should
22 be, so I would simply ask very few questions: Isn't it true
23 that you and Mr. Freeman are majority owners of 510
24 Gates Avenue?

25 You entered in 20-year lease with the former

Proceedings

1971

1 nonprofit led by a Henry Guerrero?

2 Isn't it true that Miracle Makers went out of
3 business?

4 They failed to pay 1.4 million in property taxes yet
5 after that default you and Mr. Freeman sold that property back
6 to Mr. Guerrero.

7 You did this against the wishes of the minority
8 shareholders.

9 And you made the \$5 million mortgage rather than
10 selling the property outright so as to benefit all of the
11 shareholders.

12 MR. DiCHIARA: May I just interject for a minute?

13 This is obviously impeachment material of
14 Mr. Hymowitz and I hope that the Court instructs the
15 Government and their witnesses to leave Mr. Freeman out of
16 this.

17 MS. POSA: That's fine, Your Honor, I agree with
18 that.

19 It's just that Mr. Hymowitz can't take the stand and
20 expect his credibility to not be subject to attack. That's
21 our job.

22 THE COURT: Mr. Sercarz, did you want to say
23 something about it?

24 MR. SERCARZ: Your Honor, there's a long shaggy-dog
25 story that goes along with this. We don't feel that the

Proceedings

1972

1 defendant did anything wrong, that he acted improperly, that
2 he failed to live up to his fiduciary responsibilities to the
3 minority shareholders. I don't know if you even want to hear
4 the whole explanation now.

5 I respectfully submit that while they have a witness
6 who has complained, there isn't -- is not -- a good faith
7 basis for the inquiry.

8 MS. POSA: Mr. Hymowitz can say no to every one of
9 those questions then I will have to accept it and keep rolling
10 and if that ends up hurting us because's denied everything,
11 then so be it. But we certainly have a good faith basis. We
12 have a sworn complaint. And most of these facts are in the
13 public record.

14 THE COURT: Counsel, let me consider this, I wanted
15 to hear what it was before, but Mr. Sercarz, is your position
16 that regardless of what I may rule with regard to whether the
17 Government can do what they're proposing to do, you don't
18 intend to ask your client anything about it on the rest of
19 your examination?

20 MR. SERCARZ: Not on the direct examination of my
21 witness, that's correct.

22 THE COURT: You don't intend to ask him anything
23 about it.

24 All right, so let's conclude the direct and I will
25 consider what I am going to allow.

Hymowitz - direct - Sercarz

1973

1 MR. SERCARZ: Yes, Your Honor.

2 MS. POSA: Thank you, Your Honor.

3 THE COURT: Put the witness back on the stand.

4 (Pause in the proceedings.)

5 THE COURTROOM DEPUTY: All rise.

6 (Jury enters.)

7 THE COURTROOM DEPUTY: Thank you, please be seated.

8 DIRECT EXAMINATION

9 BY MR. SERCARZ: (Continuing)

10 Q Mr. Hymowitz, you've testified a little bit about the
11 general billing practices of your part of the firm --

12 A Yes.

13 Q -- do you recall that testimony?

14 Were there ever any instances in which a client
15 requested that rather than billing at a flat fee you
16 accommodate them by using some other form of billing
17 arrangement?

18 A Yes.

19 Q And on those occasions, would you accommodate them?

20 A Sure.

21 Q All right. Throughout the entire period that you worked
22 on the HPD projects, did you ever solicit a bribe or a
23 kickback from anybody?

24 A No.

25 Q Did you ever receive a payment from anybody that you knew

Hymowitz - direct - Sercarz

1974

1 to be a bribe payment or a kickback payment?

2 A No.

3 Q Did you conspire with anyone to solicit or receive bribes
4 or kickbacks?

5 A No.

6 Q Did you know he that Bob Starzecki or MCR were making
7 payments to Marcus Garvey based on bogus or inflated invoices?

8 A No.

9 Q Were either of the checks received by your firm from MCR
10 kickback payments?

11 A No.

12 Q Did you know that Mr. Starzecki was inflating his
13 requisitions for payment to hide the kickbacks?

14 A No.

15 Q Did you knowingly participate in a scheme to defraud HPD
16 or the others who provided financing on HPD projects?

17 A No.

18 Q Did you intend to defraud HPD or the private lenders?

19 A No.

20 Q Did you engage in unlawful financial transactions with
21 the proceeds of what you knew to be a fraud scheme?

22 A No.

23 MR. SERCARZ: I have no further questions.

24 THE COURT: Mr. DiChiara.

25 MR. DiCHIARA: I have no questions, Your Honor.

Hymowitz - cross - Posa

1975

1 THE COURT: Mr. Evans.

2 MR. EVANS: No cross.

3 THE COURT: Ms. Posa.

4 MS. POSA: Yes, Your Honor.

5 MR. SERCARZ: Your Honor, I apologize one more

6 question.

7 THE COURT: All right.

8 MR. SERCARZ: May I ask it from here?

9 THE COURT: Sure.

10 Q We heard testimony that after those phone calls that have
11 been offered into evidence a letter was sent to Agent Richards
12 who was acting as the accountant for MCR.

13 Do you recall those conversations?

14 A Yes.

15 Q And the reference to that letter?

16 A Yes.

17 Q Did you send that letter to Agent Richards?

18 A No, the first time I saw it was in court.

19 MR. SERCARZ: Thank you.

20 CROSS EXAMINATION

21 BY MS. POSA:

22 Q Good morning, Mr. Hymowitz.

23 A Hello.

24 Q Mr. Hymowitz, you've been practicing law for a very long
25 time; is that right?

Hymowitz - cross - Posa

1976

1 A Yes.

2 Q I believe you testified yesterday it's been about
3 thirty-eight years; correct?

4 A Yes.

5 Q You were admitted to the New York State bar in 1976; is
6 that right?

7 A Yes.

8 Q And you've been a member of the New York State bar that
9 entire time; correct?

10 A Correct.

11 Q You never withdrew from the practice of law; did you?

12 A I'm retired now.

13 Q You've never let your law license lapse; have you?

14 A As of this year.

15 Q Okay. When did you stop working at Hymowitz & Freeman?

16 A The new job that I have started about a year-and-a-half
17 ago.

18 Q So, as of at least 2012, you were still employed by the
19 law firm of Hymowitz & Freeman?

20 A No.

21 Q When did you leave Hymowitz & Freeman?

22 A I think January 2012.

23 Q And was the firm dissolved or you just quit?

24 A I just quit.

25 Q I believe you graduated from New York Law School in 1976,

Hymowitz - cross - Posa

1977

1 is that your testimony?

2 A Sounds like approximately the right date, yes.

3 Q And you testified yesterday that you went straight to
4 work for the Legal Aid Society; is that right?

5 A From law school, yes.

6 Q You worked there as a criminal defense lawyer; correct?

7 A Yes.

8 Q You were defending the indigent; correct?

9 A Correct.

10 Q In other words, people who could not afford an attorney,
11 you represented them because they have the Constitutional
12 right to Counsel; is that correct?

13 A Sure.

14 Q And I believe you testified yesterday that the motive for
15 your community work is that you feel blessed; correct?

16 A That's true.

17 Q And what better way to give back than to represent people
18 who can't afford a lawyer; right?

19 A That's certainly one way.

20 Q You testified yesterday that you worked at Legal Aid from
21 about 1976 to 1975; is that correct?

22 THE COURT: Ms. Posa.

23 Q I'm sorry, 1979.

24 A Three years I worked there, yes.

25 Q And after you left, is your testimony that you went into

Hymowitz - cross - Posa

1978

1 private practice?

2 A Yes.

3 Q You started focusing more on real estate; is that
4 correct?

5 A Correct.

6 MS. POSA: I believe in your testimony, let me get
7 the draft transcript here, page 1871, tell me if this reflects
8 your testimony.

9 QUESTION: What is your best estimate of the last
10 occasion on which you did any criminal defense work?

11 ANSWER: I'm an attorney for 38 years, so I'll say
12 thirty-four years ago.

13 Q Was that your testimony?

14 A That's, yeah, I believe that was correct, yes.

15 Q That's not true; is it, Mr. Hymowitz?

16 A As far as I know it is. Maybe I've handled one or two
17 criminal cases in between, but nothing special.

18 Q Nothing special?

19 A I don't think so.

20 Q Nothing that you would remember?

21 A Criminal cases?

22 Q Correct.

23 A Other than perhaps traffic ticket or something for
24 someone, I can't remember anything.

25 Q Mr. Hymowitz, isn't it a fact that you represented a

Hymowitz - cross - Posa

1979

1 Mr. Joseph Candiano in a New York State criminal case in the
2 early 1990s?

3 A That name doesn't refresh my recollection about anything.

4 Q The title of that case was people of the State of
5 New York versus Capaldo, Kamen, Lefkowitz, Savarese, Candiano,
6 Filancia and Rech.

7 Does that refresh your recollection?

8 A Not at all.

9 Q Would perhaps seeing a published opinion that refers to
10 you as Counsel refresh your recollection?

11 A Okay.

12 MS. POSA: May I show this to the witness only?

13 THE COURT: Yes.

14 Q Do you see the title?

15 A No.

16 Q Do you have it yet?

17 A No.

18 THE COURT: How about now?

19 THE WITNESS: No.

20 Q Do you see it now, sir?

21 A Yes.

22 Q Do you have it now?

23 A Yes, I do.

24 Q Does the title refresh your recollection?

25 A Not at all.

Hymowitz - cross - Posa

1980

1 Q What about this paragraph here where it lists Counsel?

2 A I see my name there, yes. I have no recollection of the
3 case at all.

4 When is this from?

5 Q You can read the date right there.

6 A 1991.

7 Q This was 153-count indictment; was it not, Mr. Hymowitz?

8 A I have no recollection of this matter at all.

9 Q So, you're saying that you forgot representing a
10 defendant in an eight-defendant case on 153-count indictment
11 involving allegations of organized crime and enterprise
12 corruption? That's your testimony?

13 A Yes, I have to tell you, I don't ever remember
14 representing someone on a 153-count indictment.

15 Q Are you saying that maybe this was reported incorrectly
16 when it says that you represented him?

17 MR. SERCARZ: Objection.

18 THE COURT: Sustained.

19 THE WITNESS: I'm sorry I have --

20 THE COURT: The objection was sustained.

21 Another question, please.

22 Q Isn't it also a fact that you represented a Mr. Bruce
23 Griffith in Federal criminal case in Southern District of
24 New York in 1996?

25 A Our firm did that, yes.

Hymowitz - cross - Posa

1981

1 Q You actually appeared on his behalf; did you not?

2 A I'm sure I did once in a while. He was a commercial
3 client.

4 Q And that was a Federal income tax fraud charge; right?

5 A Correct.

6 Q Criminal case?

7 A Yes.

8 Q And did you not also represent a defendant right here in
9 the Eastern District in 2000 named Kent Vecchio?

10 A I don't think so. I might have appeared on behalf of the
11 firm for Mr. Freeman, but I don't remember that.

12 Q Would seeing the docket refresh your recollection?

13 A I'm going accept what you said.

14 Q And Mr. Vecchio was charged with conspiracy to defraud
15 the United States of America?

16 A I have no knowledge.

17 Q Mr. Hymowitz, do you know what ECF is?

18 A Who?

19 Q ECF?

20 A No.

21 Q Electronic court filing?

22 A No, I do not.

23 Q You've never used it before?

24 A I don't think so.

25 Q So, you don't know that the Government can look up all of

Hymowitz - cross - Posa

1982

1 the dockets in which you've appeared; do you?

2 A Oh, I'm sure they can.

3 Q When you testified yesterday, you had no idea that we
4 could have just gone and looked it up to disprove your
5 testimony; did you?

6 A I have had the understanding from you that you look up
7 everything.

8 Q You've known Mr. Dunn for about 15 years how; correct?

9 A Since 1998.

10 Q Sixteen years?

11 A Whatever that is, yes.

12 Q And you testified yesterday that you struck up a
13 friendship because he had had memories of your father's store;
14 correct?

15 A Correct.

16

17 (Continued on following page.)

18

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25

Hymowitz - cross - Posa

1983

1 BY MS. POSA: (Continuing)

2 Q And when you met him, I believe you testified that he was
3 unable to get bank loans, is that correct?

4 A Correct.

5 Q You heard Mr. Dunn testify that you and others loaned him
6 money through mortgages, is that correct?

7 A Correct.

8 Q I believe Mr. Dunn called it private financing. Is that
9 how you would call it?

10 A Yes.

11 Q And you and Mr. Freeman provided similar financing for a
12 number of other people, correct?

13 A Over the years, we've done that many times, yes.

14 Q And I believe you testified today that you charged a 12
15 to 16 percent interest rate, is that right?

16 A All different types of interest rates.

17 Q But your testimony today was that that was a common
18 interest rate, right?

19 A For individuals, yes.

20 Q And you haven't called any of those people to testify
21 about your generosity, have you?

22 MR. SERCARZ: Objection.

23 THE COURT: Overruled.

24 A No.

25 Q Going back to Mr. Dunn, you helped him finance the

Hymowitz - cross - Posa

1984

1 purchase of property at 144 Decatur Street back in 1988. Do
2 you recall that?

3 A Yes.

4 Q And in return for that mortgage, he assigned all the
5 rents on that property to you and the other people in your
6 investment group, is that right?

7 A That's standard, yes.

8 Q And this same group, that included yourself and your wife
9 and a few others, gave Dunn another mortgage in 1999, is that
10 right?

11 A Possibly, yes.

12 Q For \$150,000, is that correct?

13 A I don't know how much property.

14 Q 334 Marcus Garvey Boulevard, 320 Quincy, 546 Monroe
15 Street and 654 Putnam?

16 A Yes.

17 Q In 2002, you personally gave Mr. Dunn another mortgage,
18 isn't that right?

19 A I have no recollection but if you say so, yes.

20 Q Do the addresses 334 Marcus Garvey and 654 Putnam refresh
21 your recollection?

22 A Those are the same buildings.

23 Q But there was another mortgage put on top of it, wasn't
24 there?

25 A As I said, if you said so, yes, I have no recollection to

Hymowitz - cross - Posa

1985

1 that.

2 Q Would seeing the mortgage documents refresh your
3 recollection?

4 A I'm not disputing it.

5 Q That was for \$90,000?

6 A Once again, I'm not disputing it. I gave him many loans.

7 Q So just to be clear, you were not acting as his attorney
8 on those transactions, right?

9 A No.

10 Q You were loaning him the money, correct?

11 A Correct.

12 Q Now, Mr. Dunn also testified that you and he and
13 Mr. Freeman had a management company together, is that
14 correct?

15 A I was not an owner of a management company.

16 Q So you were not a member of the Odd Couple management
17 company?

18 A I don't believe so.

19 Q Mr. Dunn additionally testified that at times, you or
20 your firm represented him in your capacity as lawyers, is that
21 testimony correct?

22 A Yes.

23 Q And so he made periodic payments for the legal expenses
24 he incurred with you and your partner, correct?

25 A Yes.

CMH

OCR

RMR

CRR

FCRR

Hymowitz - cross - Posa

1986

1 Q He would pay along the way as you rendered those
2 services, correct?

3 A Probably more from Michael's work than my work. My work
4 was mostly getting him financing with banks so I would get
5 paid at the closing.

6 Q You testified that you were personally close to Mr. Dunn,
7 right?

8 A Yes.

9 Q I believe you called yourselves friends?

10 A That's fair to say, yes.

11 Q And you and Mr. Freeman were working in the same office
12 until you said you went to Long Island, is that correct?

13 A Yes.

14 Q Was that a two lawyer law firm in this period in the
15 2000's?

16 A No. There -- at that point, there, we had an entire
17 floor. There were about 14 attorneys, not partners, but 14
18 attorneys that shared the space.

19 Q That shared the space, but were they members of Hymowitz
20 & Freeman?

21 A No.

22 Q Fair to say that you saw Mr. Freeman on a fairly frequent
23 basis in the 2000's?

24 A Sure.

25 Q You testified yesterday that you initially intended to be

Hymowitz - cross - Posa

1987

1 part of SML Development in round five of NEP before the
2 Lexington Avenue project. Am I understanding that correctly?

3 A Correct.

4 Q And, in fact, SML means Stevenson, Michael and Lee, does
5 it not?

6 A Correct.

7 Q But then Mr. Dunn spoke to Wendell Walters about the
8 threshold requirements for developers to be accepted in the
9 program, is that correct?

10 A No, you're mistaken. You are going to 2003, not 2000.

11 Q Okay. It was still the same project, was it not, NEP?

12 A Different round.

13 Q Right. But the requirements were the same, were they
14 not?

15 A I don't know if they were the same.

16 Q You testified yesterday at transcript page 1880 that the
17 community board in Bed-Stuy where this project was to be
18 located wanted Mr. Dunn to be the majority owner. Is that
19 your testimony?

20 A Correct.

21 Q And that was Community Board 3, correct?

22 A I don't know which community board.

23 Q Does the name Sherronie Perry, the housing committee's
24 chair, ring a bell?

25 A I would not know.

Hymowitz - cross - Posa

1988

1 Q Would seeing an e-mail on the matter refresh your
2 recollection?

3 A Pardon me?

4 Q Would seeing an e-mail on this matter refresh your
5 recollection?

6 A I had no connection with the community board at all.

7 Q But you were somehow aware that they had an issue and
8 they required Mr. Dunn to be the majority owner, right?

9 A Mr. Dunn advised us of that and through HPD.

10 Q I'm sorry. Mr. Dunn told HPD who then told you?

11 A No. Mr. Dunn was advised by HPD that the community board
12 had a problem.

13 Q And what was that problem, if you recall?

14 A That Mr. Dunn had to be the majority shareholder.

15 Q And why was that?

16 A It's a different place and a different time, but in 2000,
17 they did not two white people and one black person to be
18 approved on a project in Bedford-Stuyvesant. That's what I
19 was told.

20 Q Leaving aside the race issue, you are aware that the
21 purpose of the Neighborhood Entrepreneurs Program was to
22 empower local real estate developers, right?

23 A Correct.

24 Q And this asset cap that we've heard a lot about, that
25 wasn't just bureaucratic red tape, was it?

CMH

OCR

RMR

CRR

FCRR

Hymowitz - cross - Posa

1989

1 A I'm sure it wasn't.

2 Q They had a programmatic reason, correct?

3 A You would have to ask them but those were the rules.

4 Q Would you disagree with Mr. Walters' testimony that the
5 purpose was to keep out large real estate developers and
6 empower local developers?

7 MR. SERCARZ: Objection as to form.

8 THE COURT: Sustained.

9 MS. POSA: Can I ask him if he would agree?

10 THE COURT: No.

11 MS. POSA: I don't understand it.

12 THE COURT: Sustained as to form. Ask it another
13 way.

14 Q You heard Mr. Walters testify that the purpose of the
15 Neighborhood Entrepreneur Program was to empower entrepreneurs
16 in the neighborhood, correct?

17 A Correct.

18 Q And would you disagree with his testimony?

19 A No.

20 Q So when you removed yourself from SML Development, you
21 were really just subverting the purpose of the program,
22 weren't you?

23 A Absolutely not.

24 Q You weren't trying to just sneak in when you knew it was
25 meant to be for people in the neighborhood?

Hymowitz - cross - Posa

1990

1 A Not at all. I knew that I could do a better job and be
2 more useful to the company as an attorney because I had prior
3 experience around or than being a principal.

4 Q You testified about how many different hats you wore,
5 correct?

6 A If needed, yes.

7 Q It seems to me based on your direct testimony that you
8 were simultaneously a real estate developer and a real estate
9 attorney and a banker and investor, would that be correct?

10 A Yes, but nothing to do with HPD.

11 Q So you were able to isolate yourself for that part of
12 your practice, correct?

13 A I'm not understanding what you're asking.

14 Q Well, in your practice generally, you were doing all
15 sorts of things all at the same time, but when it came to HPD,
16 is your testimony that you were able to isolate yourself
17 solely as counsel and you had no role in the business aspect
18 of it?

19 A That was basically all I was needed for and that's what I
20 did. When there came a time that I was needed to help with
21 the budgeting, I was asked to come to meetings and I assisted
22 with budgeting.

23 Q And you said you needed special permission for that?

24 A Yes.

25 Q And who had to grant you that permission?

Hymowitz - cross - Posa

1991

1 A It depended on which project we were on. Whenever Steve
2 or Michael said that I was coming to a meeting, because I was
3 the attorney, they would think that we were going to be
4 discussing legal issues so they would want their attorney
5 present. So we would have to -- if I was there for a
6 budgetary reason, Steve or Mike would have to tell them that
7 it has nothing to do with law and that we're bringing him here
8 just to discuss budgetary reasons.

9 Q Who would they have to tell this to?

10 A Whether it was the Enterprise or HPD, I don't know.

11 Q You were admitted to the New York State Bar in 1976,
12 correct?

13 A Correct.

14 Q And lawyers in New York State are required to submit
15 attorney registration forms every two years, is that correct?

16 A Correct.

17 Q Which means that in 38 years, you've probably submitted
18 them well over 15 times, right?

19 A Yes.

20 Q And it's very important to fill these out correctly,
21 right?

22 A Yes.

23 Q Your license to practice law literally depends on it,
24 does it not?

25 A I'm sure it does.

Hymowitz - cross - Posa

1992

1 Q I'm going to show you what's been marked for
2 identification as Government Exhibit 605.

3 MS. POSA: I'm going to show this to the witness
4 only.

5 Q Do you recognize this form, sir?

6 A Yes.

7 Q What is it?

8 A The attorney registration form.

9 Q And is that your name on it?

10 A Yes.

11 Q Is that your signature on this page?

12 A Yes, it is.

13 Q And the date is March 3, 2004, is that correct?

14 A Yes.

15 Q Is this another attorney registration form?

16 A Yes, it is.

17 Q And is that your signature, sir?

18 A Yes, it is.

19 Q And the date?

20 A April 12, '06.

21 Q Another registration form?

22 A Yes.

23 Q Also your name?

24 A Yes.

25 Q Is that again your signature?

CMH

OCR

RMR

CRR

FCRR

Hymowitz - cross - Posa

1993

1 A Yes.

2 Q The date?

3 A February 28, '08.

4 Q Another form?

5 A Yes.

6 Q Your name?

7 A Yes, it is.

8 Q Your signature?

9 A Yes.

10 Q The date?

11 A March 3rd of '10.

12 Q Last one. Attorney registration form, New York State?

13 A Yes.

14 Q Your name?

15 A Yes, it is.

16 Q And is that your signature on the last page?

17 A Yes.

18 Q That date, April 19, 2012?

19 A That's what it looks like, yes.

20 MS. POSA: Your Honor, the government moves to admit
21 Government Exhibit 605.

22 MR. SERCARZ: No objection.

23 THE COURT: Received.

24 (So marked.)

25 MS. POSA: I'm going to mark it so I don't forget.

Hymowitz - cross - Posa

1994

1 Q Each time you sign these forms --

2 MS. POSA: If I may publish.

3 (Exhibit published.)

4 Q You signed an affirmation that, The statements contained
5 herein are true and correct to the best of my knowledge and
6 belief, correct?

7 A Correct.

8 Q And that affirmation appears on every single one of these
9 forms?

10 A I don't know but I'll accept that as true, yes.

11 Q And each time -- if I could just read this Section D
12 here.

13 In accordance with Section 603.15, 1st Department,
14 or Section 691.12, 2nd Department, of the rules of the
15 Appellate Division, I affirm that I have read, and am in
16 compliance with Section 1200.46 of the joint rules of the
17 Appellate Division, DR -- and correct me if I'm wrong, but
18 that stands for Disciplinary Rule -- 9-102 of the Lawyer's
19 Code of Professional Responsibility governing the conduct of
20 attorneys, which requires an attorney to preserve the identity
21 of funds and property entrusted to him or her and to maintain
22 certain records relative thereto.

23 You signed that in each of those forms, did you not?

24 A Yes.

25 Q And this rule refers to the 1st Department. That's just

Hymowitz - cross - Posa

1995

1 Manhattan, right?

2 A Yes.

3 Q Which is where your law firm Hymowitz & Freeman was
4 located?

5 A Correct.

6 Q So no doubt that these rules apply to you, correct?

7 A Correct.

8 Q Bear with me for a little bit more legalese.

9 There's a reference to this specific rule, 603.15.

10 A I don't see that.

11 Q I'm sorry. Right there. (Indicating.)

12 A Oh, okay.

13 Q Would you agree that this is the text of that rule?

14 The financial records required to be maintained
15 pursuant to Rule 1.15 of the Rules of Professional Conduct
16 shall be made available for inspection, copying and
17 determination of compliance with court rules to a duly
18 authorized representative of the court pursuant to the
19 issuance on a randomly selected basis of a notice or subpoena
20 by the Departmental Disciplinary Committee.

21 A Yes.

22 Q And in terms of that reference to Rule .15, would you
23 agree that that particular rule requires that a lawyer shall
24 "maintain for seven years after the events that they record
25 copies of all statements to clients or other persons showing

Hymowitz - cross - Posa

1996

1 the disbursement of funds to them or on their behalf" --

2 MR. SERCARZ: Objection.

3 Q -- "copies of all bills rendered to clients" --

4 THE COURT: Sorry. You have an objection?

5 MR. SERCARZ: Yes.

6 THE COURT: Overruled.

7 Q -- "and copies of all records showing payments to
8 lawyers, investigators or other persons not in the lawyer's
9 regular employ for services rendered or performed"?

10 A If you're asking my understanding of it?

11 Q Yes.

12 A My understanding was that that had to do with our escrow
13 and our IOLA accounts.

14 Q So are you disputing that the rule actually says that a
15 lawyer shall maintain billing records for seven years?

16 A I'm not disputing anything. I'm just telling you what I
17 thought my understanding of it was.

18 Q When you signed this at least 15 times over the past
19 38 years?

20 A I can only tell you what my understanding was.

21 Q You had a legal secretary at Hymowitz & Freeman, right?

22 A We had a part-time secretary for Michael during that
23 period of time and I had a part-time paralegal.

24 Q Did you have a woman named Barbara Valente working for
25 you?

Hymowitz - cross - Posa

1997

1 A Part time.

2 Q But she worked for you for about 25 years, correct?

3 A Correct.

4 Q She was a good employee, right?

5 A Sure.

6 Q Conscientious, correct?

7 A I'm sure she was.

8 Q Well, you were the one paying her paycheck.

9 A As I said, the answer is yes, but she was Michael's
10 secretary.

11 Q Did you ever receive some kind of ethical complaint about
12 her?

13 A No, not at all.

14 Q And part of her responsibility was to type bills for
15 clients, was it not?

16 A Yes.

17 Q And would it be fair to say that when you had to give a
18 bill, you would provide her with a detailed description of the
19 work you performed?

20 A Barbara, as I said, mostly worked for Michael.

21 Q So if Barbara had said that she also worked for you,
22 you're saying she would have been lying?

23 A No, not at all. She mostly worked for Michael.

24 Q But she also worked for you, correct?

25 A If there was any time left over, correct.

Hymowitz - cross - Posa

1998

1 Q And she typed up bills for you, did she not?

2 A I'm sure from time to time.

3 Q You're sure she did?

4 A Yes.

5 Q And you needed to provide some kind of description of
6 your services in order to justify your bills, did you not?

7 A Yes.

8 Q Sometimes clients dispute their bills, don't they?

9 A I'm sure occasionally.

10 Q And, I mean, everybody complains the lawyers charge too
11 much, don't they? Not uncommon?

12 A I don't know how to respond to that.

13 Q Well, would you agree that it's important to keep track
14 of your bills?

15 A Yes.

16 Q In case somebody calls you and you need to have proof
17 that you actually did the work, right?

18 A As I told you that almost all of my work was fixed sums,
19 so there was really no discussion.

20 Q Is it not also important to keep bills for tax purposes?

21 A The payments would be in a computer and the computer
22 printout would go to our accountants.

23 Q So you did have a computer that could generate bills,
24 right, or records of billing?

25 A Payments.

Hymowitz - cross - Posa

1999

1 Q Okay. And you also use e-mail just in your practice?

2 A Oh, sure.

3 Q You have filing cabinets in your office?

4 A Yes.

5 Q And you also have a storage account or you also had a
6 storage account with a company called Iron Mountain, correct?

7 A Correct.

8 Q And that is a place where you can store files and records
9 off site, correct?

10 A Correct.

11 (Continued on next page.)

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CMH

OCR

RMR

CRR

FCRR

Side Bar

2000

1 BY MS. POSA:

2 Q Would you be surprised to know that in 25 years of
3 working at your firm, Mrs. Valente never once saw you keep
4 track of your notes in a looseleaf notebook?

5 MR. SERCARZ: Objection, Your Honor, to the form of
6 the question.

7 THE COURT: Sustained.

8 Q Would it be accurate to say that Mrs. Valente never once
9 in 25 years saw you keeping track of your bills in a looseleaf
10 notebook?

11 MR. SERCARZ: Objection. May I be heard?

12 THE COURT: Sustained. Yes. Come to the side.

13 (The following occurred at side bar.)

14 MR. SERCARZ: First of all, a witness cannot be
15 asked questions regarding the truth of another witness'
16 statements. Second, this witness is not in a position to
17 testify regarding the memory of the other witness. I object
18 to the form.

19 THE COURT: She is not a witness. I mean she has
20 not been a witness.

21 MS. POSA: Okay. That's fine. I'll move on.

22 THE COURT: Okay.

23 (Side bar ends.)

24 (Continued on next page.)

25

Hymowitz - cross - Posa

2001

1 BY MS. POSA:

2 Q Mr. Sercarz just showed you a transcript of Government
3 Exhibit 16 in which you stated that it was your firm's
4 practice to, quote, "Once an invoice is paid, it's just ripped
5 out of the book and disposed of."

6 Do you recall that?

7 A That was my practice, yes.

8 Q That's not what you actually said, was it?

9 A What do you mean?

10 Q Did you not say it was our practice?

11 A I think that's what the transcript says but that's what
12 my practice was, yes.

13 Q I just want to make sure I'm getting this right.

14 So this is your conversation with Special Agent
15 Richards. This is in evidence as Government Exhibit 16.

16 (Exhibit published.)

17 Q You said, Not billing records. And then you said, As far
18 as I know, if we're supposed to, we never did. We're not a
19 big firm.

20 So you were talking about your whole firm, right,
21 not just you?

22 A The answer is I was taking about myself. If I used the
23 wrong wording, I'm sorry, but I can only tell you what I did.

24 Q Even when you said, We've got ourselves a looseleaf, that
25 was just the royal "we"?

Hymowitz - cross - Posa

2002

1 A We do have a looseleaf and it sat in the secretarial area
2 for years.

3 Q Okay. So when you said "we" as to the looseleaf, that
4 was your firm, but when you said, We never kept bills, that
5 was just you, is that right?

6 A I never kept bills, yes.

7 Q You just testified that in Christmastime in 2006, you
8 were involved in a \$39 million real estate closing, isn't that
9 right?

10 A Correct.

11 Q You're saying you don't have a single bill of that deal
12 today?

13 A No. What you have to understand is at the closing, the
14 bank attorney sends around a list of checks that need to be
15 paid at the closing. The client signs off on that list which
16 includes my check and there's a closing statement for the
17 closing but not a bill.

18 Q So what is it that you're ripping out of the looseleaf
19 and throwing away, is it the closing statement?

20 A No. There are occasions where clients will ask me to do
21 some minor things like open a corporation or something like
22 that which is just a small fee and I will bill them after I
23 open up the company. When I get the check, then I just rip it
24 up.

25 Q What is it that you rip up?

Hymowitz - cross - Posa

2003

1 A The small bill that, a copy of the bill that I sent for
2 incorporation.

3 Q So when you do your bills, you just literally scribble it
4 on a little piece of paper, it's handwritten --

5 A No.

6 Q -- you keep a carbon copy, you send it out and you just
7 throw it away?

8 A No. It would be a one paragraph bill that would say
9 incorporation, \$1,500, filing fees, \$500, total due, \$2,000.
10 The client gets sent the bill. I put a copy of it into the
11 red looseleaf binder. When the check comes in, I have it, I
12 rip it out.

13 Q Are these one paragraph statements for lack of a better
14 word, are they typewritten or are they handwritten?

15 A Typewritten.

16 Q On an actual typewriter or on a computer?

17 A On a computer.

18 Q And are they not saved on the computer or do you actually
19 delete the file as well?

20 A I don't know.

21 Q I'm just confused because I can see throwing out, if all
22 you have is a hard copy and you through it out, you don't have
23 it. But it's also saved on the computer, wouldn't you have
24 it?

25 A The answer, maybe. I don't know.

Hymowitz - cross - Posa

2004

1 Q But you told Special Agent Richards, quote, you have no
2 billing records, isn't that right?

3 A We do not save -- when I say "we," I do not save bills
4 once I get paid. If they are in the computer, I certainly
5 wouldn't know how to get them out.

6 Q You've never used a computer before?

7 A No, I always use a computer.

8 Q Let's go back quickly to the topic of the lawyers rules
9 of conduct.

10 Are you familiar generally with what's known as
11 conflict of interest rules?

12 A Yes.

13 Q And basically that means that you can't represent people
14 on two different sides of a deal or two different sides of a
15 litigation, is that right?

16 A Correct.

17 Q In fact, before you take in any new clients, you probably
18 ran what's known as a conflicts check, right?

19 A No.

20 Q So you would just take people in without any regard as to
21 whether or not it would pose a conflict to your existing
22 clients?

23 A I don't know that I've ever run a conflict check.

24 Q But you do understand that the ethical rules, the most
25 basic rule for a lawyer, for an attorney is that you have an

Hymowitz - cross - Posa

2005

1 ongoing duty of loyalty to your clients, isn't that right?

2 A Of course.

3 Q So, for example, if party A and party B enter in a
4 contract, you can only represent A or B. You can't represent
5 both, can you?

6 A It depends on what the situation is and it also depends
7 on whether you have the approval of the parties.

8 Q Well, you talked briefly about this deal, proposed deal
9 with Lutheran Synod, correct?

10 A Correct.

11 Q And you testified, the term you used was that you served
12 them as a real estate consultant, is that correct?

13 A Correct.

14 Q And then you also talked with Bob Starzecki about
15 representing him in that development, is that right?

16 A About representing him in that development and allowing
17 him to bid on a project.

18 Q So what would happen if it came that Bob would need to
19 sue Lutheran to get back pay?

20 A I'm sorry?

21 Q If it came that Starzecki got the project and he had to
22 sue the Lutheran Synod, you would really be in a pickle
23 wouldn't you?

24 A No, you're wrong.

25 Q Because you advocated for both of them?

Hymowitz - cross - Posa

2006

1 A No, I would not have represented him.

2 Q Not formally?

3 A He would have had other counsel to represent him.

4 Q Because he certainly did have other counsel in that time
5 period, didn't he?

6 A I have no idea.

7 Q Well, you testified that Bogdan Starzecki said, at the
8 Bed-Stuy closing said, I need to get you to start working for
9 me. Do you remember that testimony? It was just this
10 morning.

11 A Yes.

12 Q And you --

13 A Not with that emphasis but, yes, I did say something like
14 that, yes.

15 Q And you were representing SML at that closing, right?

16 A Yes.

17 Q And did Bogdan Starzecki not already have an attorney of
18 his own at that closing?

19 A Not at all.

20 Q He was not represented by an attorney?

21 A No.

22 Q You heard him testify that he had an attorney named Chris
23 Georgoulis in this time period, did he not?

24 A Yes, he did, but there was no attorney at the closing.

25 Q So your testimony is that he had this multi-million

Hymowitz - cross - Posa

2007

1 dollar deal, no attorney representing him at all, is that
2 right?

3 A That's correct. All he would do is come to the closing,
4 sign his documents with regard to building plans,
5 specifications, general conditions, and he would leave.

6 Q So when he testified that he did, in fact, have an
7 attorney working for him on his real estate deals, you're
8 saying that was inaccurate?

9 A No, you're not understanding what I'm saying. There was
10 no attorney. When he was at any of the closings, the SML
11 closings, he never had an attorney present.

12 Q I'm not saying physically present, but did he not have an
13 attorney representing him in the negotiations of these
14 contracts?

15 A Not at all.

16 Q Multi-million dollar contracts, no lawyer?

17 A Absolutely not.

18 Q Pro se?

19 A Yes.

20 Q I'm going to go back to Government Exhibit 600 which was
21 that retainer agreement that we've talked about quite a lot.
22 Do you recall? Do you recall that?

23 A I certainly do.

24 Q Now, in Mr. Sercarz's opening statement, he told the
25 jury: Please note that it is unsigned. This document was

Hymowitz - cross - Posa

2008

1 clearly a hastily prepared draft which was meant to be talking
2 points in a discussion of work that was going to be done for
3 Bogdan Starzecki.

4 That's your testimony essentially, right?

5 MR. SERCARZ: Object.

6 THE COURT: Overruled.

7 Q Do you disagree with Mr. Sercarz's opening statement?

8 A No, my testimony was what I said earlier.

9 Q So your testimony is that it was just a draft, correct?

10 A Correct.

11 Q And you're testifying now that you just relied on Michael
12 Freeman's template, is that right?

13 A Correct.

14 Q When you were in these recordings, you were on multiple
15 recordings over multiple days, correct?

16 A I think there was just two on the same day.

17 MR. SERCARZ: May we approach?

18 THE COURT: All right.

19 (Continued on next page.)
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Side Bar

2009

1 (The following occurred at side bar.)

2 MR. SERCARZ: The government has been very careful
3 with me about keeping me to those conversations that have been
4 admitted. If the government is going to go into other
5 conversations, and they may, I'd like an offer of proof.

6 THE COURT: What conversations?

7 MR. SERCARZ: She just asked about multiple
8 conversations over multiple days.

9 MS. POSA: There were.

10 MR. SERCARZ: The only conversations that are in
11 evidence concerning my client are the two on the same day.

12 THE COURT: Oh, I see.

13 MS. POSA: So I apologize for that. I'm just going
14 to say at any point, did you ever mention that it was Michael
15 Freeman who did that retainer agreement.

16 MR. SERCARZ: I have no objection to that question,
17 but just while we are here so I don't make a pest out of
18 myself --

19 THE COURT: Yes.

20 MR. SERCARZ: -- I would like a standing objection
21 to any question by Ms. Posa that asks whether or not any
22 witness is telling the truth or lying. That's inappropriate.

23 MS. POSA: Okay. I was asking about his own
24 statement.

25 THE COURT: Okay. All right.

Hymowitz - cross - Posa

2010

1 (In open court.)

2 BY MS. POSA:

3 Q At any point in your conversation with Mr. Bogdan
4 Starzecki or Special Agent Richards which are now in evidence,
5 did you ever say, Retainer agreement, that's what Michael
6 Freeman would have done, not me?

7 Did you or did you not?

8 A I'm not sure what you're referring to. I'd like you --

9 Q In those conversations, did you at any point say that it
10 was Michael Freeman who prepared the retainer agreement or,
11 I'm sorry, prepared the template?

12 A I told FBI Richards that I was preparing a retainer based
13 on a conversation with Mr. Freeman.

14 Q I believe what you said was that you were asked to
15 prepare a retainer?

16 A Correct.

17 Q But you didn't say that you weren't familiar with
18 retainer agreements because that was really Mr. Freeman's
19 bailiwick, he was in charge of the templates, right?

20 A Why would I say that to him?

21 Q I'm going to show you something.

22 MS. POSA: If I can just show this to the witness
23 for demonstrative purposes.

24 Q Do you recognize this type of object?

25 A Yes, I do.

Hymowitz - cross - Posa

2011

1 Q What is it?

2 A A stamp.

3 Q It says "Draft" on it?

4 A Yes, it does.

5 MS. POSA: Can we show this to the jury just for
6 demonstrative purposes?

7 THE COURT: Yes.

8 (Published.)

9 Q It says "Draft"?

10 A Yes, it does.

11 Q It stamps "Draft" on documents, right?

12 A Yes, it does.

13 Q This is a type of stamp that lawyers all over the country
14 keep in their law firms, isn't it?

15 A I'm sure they do.

16 Q I'm sure you had some in your office, didn't you?

17 A Not in my desk, no.

18 Q The purpose of such a stamp is to prevent people from
19 signing contracts that are still in draft form, isn't it?

20 MR. SERCARZ: Objection.

21 THE COURT: Overruled.

22 A Yes.

23 Q But it never occurred to you to draft, to have stamped
24 "draft" or even write that on this retainer that you allegedly
25 gave Mr. Freeman, right?

Hymowitz - cross - Posa

2012

1 A I wasn't sending it out so there was no purpose to do
2 that.

3 Q It would have prevented him from sending it to the client
4 if that's what you're saying he did, right?

5 MR. SERCARZ: Objection to the form of that
6 question.

7 THE COURT: Overruled.

8 A There was no reason for me to believe that that document
9 was going anyplace.

10 Q Well, you said that you usually don't draft retainer
11 agreements, right?

12 A Very few.

13 Q That's why you're relying on Mr. Freeman's alleged
14 template, is that right?

15 A No. It was because he had spoken to Mr. Starzecki and I
16 wanted to try and get a document that he was accustomed to.

17 Q You didn't work for Mr. Freeman, did you?

18 A No.

19 Q You're partners, right?

20 A Yes.

21 Q And in fact, you were the senior partner in the firm
22 because you came on first, isn't that right?

23 A No such thing as senior partner in our firm.

24 Q But you were full partners, correct, you weren't his
25 associate?

Hymowitz - cross - Posa

2013

1 A Correct.

2 Q So wasn't it strange that he's asking you to do something
3 based on a conversation that he had?

4 A No, you have to know Mr. Freeman. When he has something
5 he wants done, it needs to get done immediately.

6 Q It had to get done immediately the day after New Year's,
7 right?

8 A Correct.

9 Q There was a lot of urgency?

10 A Everything that has to do with Mr. Freeman's practice is
11 an emergency.

12 Q Although Mr. Starzecki didn't actually sign that until
13 February 26th, isn't that right?

14 A That's what I heard, yes.

15 Q So when he made this alleged request, you didn't say,
16 Hey, Mike, I'm exhausted, I just worked through Christmas, did
17 a \$39 million deal, do your own retainer agreement? Nothing
18 like that?

19 A I would never do that, no.

20 Q You didn't say, How am I supposed to do a retainer
21 agreement when I don't even know what this was about, did you?

22 A I did the retainer agreement based on our conversations
23 to the best of my ability.

24 (Continued on next page.)

25

Hymowitz - cross - Posa

2014

1 (CONTINUING)

2 Q Are you familiar with the rule of professional
3 responsibility that bans nonrefundable retainer agreements?

4 A I am now.

5 Q And when you saw this in Mr. Freeman's template, you
6 didn't say what the heck, this is totally improper?

7 A I have no recollection of seeing that.

8 Q But do you recall exactly which parts you filled in and
9 which parts you did not fill in?

10 A The only parts that I can tell you for sure I filled in
11 was the one-year \$100,000.

12 Q And your eyes just glazed over the rest; is that your
13 testimony?

14 A No, not at all.

15 Q You read the rest; correct?

16 A I'm sure I did.

17 Q So, you would have read the reference to nonrefundable?

18 A I have no idea whether it was there or not at the time.

19 Q Is it not in the document we just saw? I'll show you
20 Government's Exhibit --

21 A It's there now, yes. I have no recollection of it.

22 Q Are you saying that document is inaccurate or it doesn't
23 represent what was done at the time?

24 A I can't tell you for sure whether it's the exact same
25 document I prepared or not.

Hymowitz - cross - Posa

2015

1 Q I thought you just testified that it was.

2 A I'm not understanding what you're saying. I prepared a
3 draft, I put it put it on Michael's desk. That's the last I
4 saw of it.

5 Q Now, you know now that Mr. Starzecki paid \$134,500 to
6 Hymowitz & Freeman; is that right?

7 A I learned about the 34,500, I think, from FBI Agent
8 Richards or Mr. Starzecki on October 3rd of 2011.

9 Q And your testimony is that you never did actually any
10 work for that money; is that right?

11 A That's not what I said.

12 Q Did you do any work for that money?

13 A The work that I did was to try to get Mr. Starzecki bids
14 on construction projects.

15 Q All right. This is why I'm confused. You are the one
16 who's trying to do the work, but it's Mr. Freeman who's asking
17 you to do the retainer; is that right?

18 A As I said, Mr. Freeman was out of the office, he wanted
19 me to get a retainer prepared and that's what I did.

20 Q For the work that you were supposed to be doing?

21 A I don't know whether Mr. Freeman intended to do any of
22 the work.

23 Q So, you were saying that you were paid \$1000,000 to put
24 in a good word on a couple bids; is that your testimony?

25 A To be able to speak to all the people that I knew in the

Hymowitz - cross - Posa

2016

1 construction business or developers who were having projects
2 to come on-line to see whether I can get an opportunity for
3 Mr. Starzecki to bid.

4 Q So, he was paying you not for legal services rendered but
5 to basically be his promoter if you will; is that right?

6 A Okay, that's a good enough term.

7 Q A hundred thousand dollars?

8 A Actually that's a very small fee if he was to get, for
9 example, a \$39 million construction loan.

10 Q But he didn't get anything like that from your work; did
11 he?

12 A No. Unfortunately, the real estate business died at the
13 end of the year.

14 Q So, he paid a hundred thousand dollars for nothing; is
15 that your testimony?

16 A No.

17 Q No actual results; right?

18 A It wasn't meant to be results. Based on the years that
19 he knew me, he felt comfortable that I would be able to get
20 him bids. Once I get him bids it's up to him to bid a good
21 enough number to get the job.

22 Q So your testimony is that you did know at the time that
23 you did receive a hundred thousand dollars; correct?

24 A Yes.

25 Q And after the market collapsed and you weren't able to

Hymowitz - cross - Posa

2017

1 get him any work, it never occurred to you to give him the
2 money back; is that right?

3 A No.

4 Q That doesn't sound very generous; does it?

5 A It has nothing to do with being generous. I performed as
6 best I could and it didn't work out.

7 Q Let me show you Government's Exhibit 602. This is in
8 evidence.

9 Your testimony is that you did not prepare this
10 letter; is that right?

11 A Absolutely.

12 Q So, where it says that the amounts received for you were
13 for services provided to you and your company, are you saying
14 that's true or not true?

15 A Your payments to our firm... that's true.

16 Q Mr. Hymowitz, when you spoke to Bogdan Starzecki in 2011,
17 he had been under indictment for more than two years; is that
18 correct?

19 A I have no idea.

20 Q You knew that you were speaking to somebody who was under
21 criminal indictment; did you not?

22 A Absolutely not.

23 Q That's why you were so cautious about asking him whether
24 it was a civil or criminal case?

25 A I don't think I asked him. I think I asked

Hymowitz - cross - Posa

2018

1 Agent Richards because of the type of questions he continued
2 to ask me and since he was the accountant representing with
3 the IRS.

4 Q Mr. Hymowitz, we've heard a lot in this trial about the
5 bidding process for construction contracts; is that correct?

6 A Yes.

7 Q And based on your extensive experience in real estate,
8 would you agree that the whole purpose of bidding is to get
9 the lowest responsible bid?

10 A Absolutely.

11 Q To use the power of competition to drive down costs for
12 those who are actually paying for the contract?

13 A Absolutely.

14 Q Both private and public, right?

15 A Yes.

16 Q And you heard Anne Marie Hendrickson testify yesterday;
17 right?

18 A Yes.

19 Q Is it fair to say she doesn't have a dog in that fight;
20 right?

21 A I'm sure not.

22 MR. SERCARZ: Objection, Your Honor.

23 THE COURT: Overruled.

24 Q Are you aware of any motive she might have to testify
25 falsely?

Hymowitz - cross - Posa

2019

1 A No.

2 Q You heard her testify that bidding high or padding a bid
3 to take a kickback into account would victimize HPD; did you
4 not?

5 A Correct.

6 Q And ultimately the people of New York City would pay the
7 price?

8 A Yes.

9 Q You also heard Peter Spina say the same thing regarding
10 Department of Housing Urban Development in the Federal
11 Government; correct?

12 MR. SERCARZ: Your Honor, I object to this line of
13 questioning. My clients's being asked to adopt testimony of
14 others.

15 MS. POSA: I'm refreshing his recollection as to
16 that testimony.

17 THE COURT: You are entitled to ask if he agrees.
18 Go ahead.

19 Q Would you agree or disagree with Ms. Hendrickson's
20 testimony that padding bids would victimize New York City?

21 A I agree, sure.

22 Q And would you agree or disagree with Mr. Spina's
23 testimony that padding bids would victimize the Federal
24 Government?

25 A True.

Hymowitz - cross - Posa

2020

1 Q I'm going to go back to Government's Exhibit 630.

2 MS. POSA: Sorry, one second.

3 (Pause in the proceedings.)

4 Q Actually, you know what? I think you remember it now, I
5 will do it from memory.

6 That was an E-mail from Dan Magidson from Enterprise
7 during that?

8 A Yeah, sure.

9 Q And he wanted to know whether you were acting as a lawyer
10 or as a partner in that project; is that correct?

11 A Correct.

12 Q Okay. You never responded to that E-mail; right?

13 A I thought it was just very silly of what he said.

14 Q Never said hey, I've got special permission to talk about
15 budget matters; did you?

16 A They knew that I had been working for weeks with the
17 Enterprise on a budget.

18 Q But you never actually said that to him; did you?

19 A Why would I?

20 Q Let me go back now to the signature card that we've
21 talked a lot about. Government's Exhibit 552.

22 So it's your testimony that Mr. Dunn and Mr. Freeman
23 asked you to put your name on this?

24 A Yes.

25 Q Is that right?

Hymowitz - cross - Posa

2021

1 A Yes.

2 Q Did they ask you to identify yourself as vice president?

3 A We just made up a title.

4 Q You just made up a title?

5 A Yes. Members or owners, vice president would be someone
6 that's just an employee.

7 Q Are you familiar with the concept of a power of attorney?

8 A Yes.

9 Q And that is something, if I understand correctly, that
10 allows somebody else to sign on your behalf; correct?

11 A Yes.

12 Q So, they could have simply given you power of attorney
13 without labeling you the vice president; isn't that right?

14 A It would have been much harder to write a check to get
15 approved by the bank. And this document went to the
16 Enterprise and to HPD.

17 Q Is that right?

18 A As far as I know, HPD and Enterprise got all banking
19 resolutions.

20 Q Did you attach this to your attorney opinion letter that
21 you sent to HUD saying that you had no financial interest in
22 SML Bed-Stuy?

23 A I did not have a financial interest based on this. I
24 have no shares of stock, I have no membership interest, there
25 is no side letters or understandings.

Hymowitz - cross - Posa

2022

1 Q Did you let them know that hey, maybe I don't have a
2 financial interest but, just so you're aware, I have
3 identified myself as the vice president in the past?

4 A They had this document.

5 Q You're saying HUD had this document?

6 A I don't know if HUD did. Enterprise or HPD for sure did.

7 Q Have you even any evidence in this case that they had
8 these documents?

9 A I didn't know that I would have to do that.

10 Q You obviously have no obligation. Do you recall giving
11 it to them?

12 A I believe that was a criteria of the program, that
13 banking resolutions copies were given to either HPD or the
14 bank.

15 Q Is this a banking resolution or a signature card?

16 A This is a signature card.

17 Q So, you see here where it says business entity
18 certification?

19 A Where are we pointing to?

20 Q Sorry. Right here.

21 A Yes.

22 Q And it says the undersigned is authorized to certify the
23 names, titles and signatures of authorized signers?

24 A Yes.

25 Q That means that Mr. Freeman is actually certifying the

Hymowitz - cross - Posa

2023

1 truthfulness of this document; wasn't he, as to the names, the
2 signatures and the title?

3 A Sure.

4 Q The title that you quote, just made up; is that right?

5 A That's, that was the title that I was given, yes.

6 Q Do you often just make up stuff that you put on documents
7 that go to banks?

8 A It's not unusual for an attorney to also sign on some
9 other capacity. Yesterday you showed Mr. Dunn documents, Alex
10 Avitabile who's the attorney for the Enterprise signed
11 documents as secretary. It's not that unusual.

12 Q What I'm saying is, you put the term vice president down?

13 A Correct.

14 Q Your testimony is that you were, in fact, not the vice
15 president; correct?

16 A That's not what I'm saying.

17 Q Were you the vice president of SML?

18 A I was given a title of vice president.

19 Q I'm not asking with about your title. Were you, in fact,
20 the vice president of SML Bed-Stuy or were you not?

21 A I'm not understanding what you're trying to say.

22 Q Were you the vice president of SML Bed-Stuy or not?

23 A At that point, yes.

24 Q The day you signed the signature card?

25 A Correct.

Proceedings

2024

1 Q And at no other time, ever?

2 A Only for the purposes of signing checks, if needed to be.
3 And I never had to sign any checks.

4 Q Mr. Hymowitz, isn't it true that you are a majority owner
5 of a property located at 510 Gates Avenue in Brooklyn?

6 A I don't own any shares of stock in that company.

7 THE COURT: Counsel, let's take our luncheon recess
8 now, we're moving to another area, all right?

9 MS. POSA: All right.

10 THE COURT: So, Members of the Jury, please return
11 at a quarter of 2:00 and we'll continue at that point.
12 Remember not to discuss the case in any way.

13 Thank you. Quarter to 2:00.

14 THE COURTROOM DEPUTY: All rise.

15 (Jury exits.)

16 (In open court; outside the presence of the jury.)

17 (Witness excused.)

18 THE COURT: All right, you may be seated.

19 Ms. Posa, were you getting to the questions that
20 were subject to an objection regarding the lawsuit?

21 MS. POSA: Yes, I'm sorry, Your Honor, I thought the
22 issue had been resolved but if I went too quickly, I
23 apologize.

24 THE COURT: All right.

25 In my view, you should not be permitted to ask those

Proceedings

2025

1 questions. I will allow the character witness to be asked the
2 one question that Mr. Capozzolo has proposed, if you choose to
3 put in a rebuttal character witness, but I have insufficient
4 basis for you to ask questions of this witness regarding that.

5 So, are you going to have anything more?

6 MS. POSA: Yes, Your Honor.

7 THE COURT: How much more?

8 MS. POSA: Not very much. I do have to confer with
9 Mr. Capozzolo for a minute, but pretty quick, I think.

10 THE COURT: All right, then, at 1:45 we will
11 reconvene.

12 MS. POSA: Your Honor, I want to be clear; I will be
13 able to inquire as to the personal benefits he's derived from
14 his charitable work; correct? That's not off-limits.

15 THE COURT: No, that is not off-limits.

16 MS. POSA: Okay. Thank you.

17

18 (Continued on following page with AFTERNOON
19 SESSION.)

20

21

22

23

24

25

Proceedings

2026

AFTERNOON SESSION

(In open court.)

(Judge NINA GERSHON enters the courtroom.)

(The following occurs outside the presence of the jury.)

THE COURTROOM DEPUTY: All rise.

Thank you, please be seated.

THE COURT: Counsel, before we begin, let me just read you another juror note that I received, which I think is not a problem.

I am respectfully asking for consideration to be absent on April 11th.

ALL: So do we.

THE COURT: Very good. I was going to say, I hope that this note doesn't make Counsel feel that need to go into April 10th, but anyway, I don't need to go into it, I suppose. You can see it if you like, it is from Juror Number 3, it has to do with an event.

So, with your permission, maybe I can just send her a note back saying April 11th will not be a problem.

Is there any opposition to that?

MR. EVANS: No, Your Honor.

MR. SERCARZ: No.

MR. DiCHIARA: No.

MS. POSA: None, Your Honor.

Hymowitz - cross - Posa

2027

1 THE COURT: All right, so let's get some special
2 juror note paper and send it in, all right?

3 Are we ready, then? The jurors are all back?

4 THE COURTROOM DEPUTY: Yes, Judge.

5 THE COURT: All right, then let's bring them in.

6 THE COURTROOM DEPUTY: Will do, Judge.

7 (Pause in the proceedings.)

8 THE COURTROOM DEPUTY: All rise.

9 (Jury enters.)

10 THE COURTROOM DEPUTY: Thank you, please be seated.

11 (Witness resumes stand.)

12 MS. POSA:

13 THE COURT: Ms. Posa, you may continue.

14 MS. POSA: Thank you.

15 CROSS EXAMINATION (Continuing)

16 BY MS. POSA:

17 Q Mr. Hymowitz, just to go back over your testimony from
18 before lunch, is it correct you testified that in your real
19 estate work you would usually just be paid at the closing?

20 A Mostly, yes.

21 Q And your practice was to get paid in a lump of sum and
22 not to actually break down your costs; is that right?

23 A On most of the stuff.

24 THE COURT: Excuse me, Mr. Hymowitz, is there a
25 green light on your microphone?

Hymowitz - cross - Posa

2028

1 THE WITNESS: Yes.

2 THE COURT: Is it on?

3 THE WITNESS: Yes, I think so.

4 THE COURT: Victor, we need the microphone, please.

5 Thank you.

6 All right, go ahead, please.

7 Q Sorry, we'll just start all over because I think it was
8 hard to hear.

9 I believe you testified before the break that your
10 practice was usually just to get paid at the closing on your
11 real estate deals; is that right?

12 A Any closing that took place at a bank I would get paid
13 from the proceeds of the closing, yes.

14 Q And you testified on direct examination this morning that
15 generally your practice was to bill in a lump of sum whereas
16 Mr. Freeman, based on the type of work he did, would be more
17 hourly; is that correct?

18 A I believe Mr. Freeman billed almost exclusively hourly
19 and most of my work would be, as I said, at closings I would
20 get lump sum payments.

21 Q And is that why when Special Agent Richards asked you for
22 an itemized breakdown, you said one would not be available?

23 A I'm not understanding what you're asking me.

24 Q Do you recall when you were speaking to Special Agent
25 Richards he asked you for a breakdown of the services that you

Hymowitz - cross - Posa

2029

1 provided to Mr. Starzecki?

2 A Correct.

3 Q And you responded quote, an itemized breakdown, no.

4 A That's because there was no billing for Mr. Starzecki.

5 Q And because your practice is not to provide an itemized
6 breakdown in real estate work; right?

7 A No, because there was a lump sum for all of the work.

8 There would being absolutely no reason for me to keep records
9 of any specific time or billing for any particular item that
10 would have been done in that year. If I did one hour's worth
11 of work or I did a thousand hours worth of work, the fee would
12 be the same, so there's no reason to keep any billing records.

13 Q Did you keep billing records for Lutheran Synod?

14 A Yes.

15 Q You did?

16 A Yes.

17 Q And did those include itemized breakdowns?

18 A Yes.

19 Q And how is it that you kept billing records for them and
20 not for Mr. Starzecki?

21 A As I just said, Mr. Starzecki was a lump sum payment for
22 the year and Lutheran Synod was a different arrangement.

23 Q Did you not testify earlier that usually your practice
24 was to rip something out of a book after it had been paid?

25 A Correct.

Hymowitz - cross - Posa

2030

1 Q And presumably, Lutheran Synod paid their bills; correct?

2 A Yes, they did.

3 Q So, did you maintain those billing records or not?

4 A For the Lutheran church, I probably did.

5 Q In fact, I'm going to show you Government's Exhibit 642.

6 A Yes.

7 Q Look through it for a minute.

8 A Mm-hmm.

9 Q Are those bills for Hymowitz & Freeman to Lutheran Synod?

10 A Yes, from me to Lutheran Synod, yes.

11 Q And that's for the services that you rendered for them?

12 A I don't know if it's all of them, but a lot of them, yes.

13 MS. POSA: The Government moves to admit

14 Government's Exhibit 642.

15 MR. SERCARZ: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 642 was received in evidence.)

18 MS. POSA: I'm going to show you a few of these

19 pages, if we could please publish these to the jury.

20 THE COURT: Yes.

21 Q Is this what you would call an itemized breakdown, sir?

22 A Yes.

23 Q And did you prepare this bill?

24 A Probably the handwritten bill, yes.

25 Q Do you know who prepared the typewritten version of it?

Hymowitz - cross - Posa

2031

1 A Probably my paralegal.

2 Q And the date here is January 31st, 2007; right?

3 A Correct.

4 Q About the same month at least as that retainer agreement
5 for Bogdan Starzecki; right?

6 A Right.

7 Q And you list meetings, phones calls, meetings, calls,
8 E-mails, E-mails, meeting, speaking; correct?

9 A Yes.

10 Q So, this goes into quite a lot of detail about the type
11 of work you were doing for them; right?

12 A Correct.

13 Q And you said that you were doing similar work for
14 Mr. Starzecki in that you were making calls and trying get
15 bids for him; right?

16 A No, that's totally different work.

17 Q You were not making calls and getting bids for
18 Mr. Starzecki?

19 A No, this -- you're confusing two different types of work.

20 Q Please, enlighten us, sir.

21 A Pardon me?

22 Q Please, explain to us.

23 A The Lutheran Synod, I was retained as a construction
24 consultant, real estate consultant. The way I was getting
25 paid hourly, so I had to keep records. That's the only way

Hymowitz - cross - Posa

2032

1 that I could get paid.

2 With regard to Bob Starzecki, we had a lump sum
3 agreement for all of the work that I'd perform in one year's
4 time for the law firm, whatever we did as I just said, if it
5 was an hour's worth of work or a thousand hours worth of work,
6 the payment was the same. There was no reason to keep records
7 for Mr. Starzecki.

8 In the same respect if I did a real estate closing,
9 if I spend ten hours at a closing or a hundred hours at the
10 closing, it was one fee. There would be no hourly records.

11 Q So, I'm actually not talking about your fee arrangement.
12 I'm talking about the actual work you did.

13 You testified that you made calls for Mr. Starzecki;
14 right?

15 A Absolutely.

16 Q You reached out to people; correct?

17 A Absolutely.

18 Q Did you send E-mails for him; right?

19 A I'm sure I did.

20 Q You set up meetings; correct?

21 A One or two, yes.

22 Q So, when you did that type of work for Lutheran Synod,
23 they got itemized bills, but when you did the same type of
24 work for Mr. Starzecki, it was just a lump sum; is that right?

25 Again I'm not talking about your agreement. I'm

Hymowitz - cross - Posa

2033

1 talking about the work you were doing.

2 A I'm not understanding why what I just said you're not
3 understanding me.

4 Q I'm not saying I don't understand it. I'm saying that
5 very similar types of work, one scenario you break it down
6 hourly, the other scenario for Bob Starzecki it's just a lump
7 sum.

8 Do I understand that correctly?

9 A Correct. One I'm getting paid hourly and one I'm not.

10 Q What makes you choose between getting paid hourly or in a
11 lump sum?

12 A I prefer to get paid in a lump sum. The only reason that
13 I got paid hourly with the Lutheran Synod is because they did
14 not have an idea of how much work they needed me to do. Once
15 they decided to go forward with the construction at
16 119th Street, the hourly changed to a lump sum. I got paid
17 \$11,000 a month.

18 Q Sometimes you make that decision because it's what's in
19 the best interest of the client; right?

20 A It's an agreement between myself and the clients,
21 correct.

22 Q For example, in this bill dated August 19th, 2008, it's
23 written --

24 A I don't have it on here.

25 MS. POSA: I'm sorry, can we please show that to the

Hymowitz - cross - Posa

2034

1 witness as well?

2 THE COURTROOM DEPUTY: Has this been admitted?

3 MS. POSA: Yes, it's been admitted.

4 Q All right. Do you see where it says all billing as of
5 July 1st, 2008, will be done on an hourly basis at \$400 an
6 hour in that I do not believe our monthly agreement is cost
7 efficient for the church at this time?

8 Was that your statement, sir?

9 A Yes.

10 Q So, you were doing what was most cost efficient for the
11 church?

12 A They were a good client and yes, absolutely.

13 Q I guess that meant Bob Starzecki was not a good client
14 because you were willing to take a hundred thousand dollars
15 from him for basically no work?

16 A As I told you, we had an arrangement for one year,
17 \$100,000. I can't say it more times.

18 Q One more thing I want to point out to you. So, this is a
19 bill dated May 17th, 2007?

20 A Okay.

21 Q Do you see the stamp up here that said second request?

22 A Correct.

23 Q That's to emphasize this is your second request for
24 payment; right?

25 A Correct.

Hymowitz - cross - Posa

2035

1 Q So, you did have stamps when it came time for demanding
2 money; right?

3 A I did not have them. That would be the paralegal or
4 secretary, not me.

5 Q Can you just give us one second?

6 THE COURT: Yes.

7 (Pause in the proceedings.)

8 Q Sorry, Mr. Capozzolo pointed something out to me.

9 To go back to this last page where you said as of
10 July 1st, 2008, you're going to start billing on an hourly
11 basis.

12 A Yes.

13 Q You still did those breakdowns even when it was not
14 hourly; right?

15 A No.

16 Q Well, this itemized breakdown was from January 31st,
17 2007; right?

18 A It's all for work in 2006.

19 Q And that other letter was for work in 2008?

20 A Correct.

21 Q So, you were, in fact, doing a breakdown even before you
22 went on an hourly basis; right?

23 A No. I started working for the Synod in the summer of
24 2006 at \$400 an hour. Later on, when the project was ready to
25 start construction, we switched to \$11,000 a month as a flat

Hymowitz - cross - Posa

2036

1 fee. When the real estate market died in 2008 it was
2 inappropriate for me to be charging \$11,000 a month because I
3 was not doing anywhere close to \$11,000 a month for the
4 church, so I wrote them that letter and I told them I was
5 going back to \$400 an hour, which would be a lot cheaper for
6 the church.

7 Q Okay. It doesn't say that you were going back to that
8 arrangement; right? It just says that this is what you're
9 doing.

10 I'll move on.

11 A Okay.

12 Q Mr. Hymowitz, you testified yesterday that you are a
13 blessed man; right?

14 A Yes.

15 Q You have a large and successful family?

16 A Yes.

17 Q You testified that your daughter went to an Ivy League
18 school?

19 A Correct.

20 Q And it sounds like you've been honored by many charitable
21 organizations; is that correct?

22 A Yes, that's true.

23 Q You testified about getting a certificate from Congress,
24 remember that?

25 A Correct.

Hymowitz - cross - Posa

2037

1 Q Now, your charitable work has also allowed you to meet
2 some very prominent people; isn't that right?

3 A I'm sure.

4 Q In fact, in 2009, Nassau County executive Tom Suozzi put
5 out a press release praising you for your work for Habitat for
6 Humanity; is that right?

7 A I didn't know that, but very possible, sure. I think I
8 was either the vice president or president for Habitat for
9 Humanity at the time.

10 Q And that's the same Tom Suozzi who ran for governor in
11 2006; right?

12 A I think so, yes.

13 Q And the same Tom Suozzi who was Chairman of the New York
14 State Commission on Property Tax Relief; isn't that right?

15 A I don't know that.

16 Q Well, is it fair to say that there are few things more
17 important to people in real estate than property taxes?

18 A I don't know.

19 Q Let me show you Government's Exhibit in evidence 550,
20 this is just one page from it.

21 Is that your signature on the check?

22 A Yes.

23 Q And did you date that, I believe that's April 9th, 2007?

24 A Correct.

25 Q From your attorney-at-law account?

Hymowitz - cross - Posa

2038

1 A That's our operating account, yes.

2 Q And that was shortly after you got the hundred thousand
3 check from Bogdan Starzecki; right?

4 A It was tax time.

5 MR. SERCARZ: We'll stipulate that the check was
6 dated March 2nd.

7 THE COURT: March 2nd? It says April 9th.

8 Q The check from Bogdan Starzecki was March 2nd, 2005,
9 right?

10 THE COURT: Oh, thank you.

11 A Every year we wrote out the check to our pension fund.

12 Q And you wrote that out of the same account, the
13 attorneys-at-law operating account, that you received the
14 check from Mr. Starzecki into; right?

15 A Sure.

16 Q Now, this is another page from Government's Exhibit 550
17 in evidence.

18 A You have to make it clearer, please.

19 Q I think it sometimes just needs a minute, maybe not.

20 And is that your signature?

21 A Yes, it is.

22 Q Dated April 19th, 2007?

23 A Correct.

24 Q Couple days after April 15th, tax time; right?

25 A Correct.

Hymowitz - cross - Posa

2039

1 Q And again, this is a check to the Hymowitz & Freeman
2 money market plan, is that the handwriting?

3 A That's another pension fund, yes.

4 Q And again, this was the same bank account that you used
5 to receive the check from Bogdan Starzecki, right?

6 A Yes, it is, and we do that every April for as long as
7 we've been in practice.

8 Q Mr. Hymowitz, is it correct that two times during your
9 testimony, both on direct and cross, you stated unequivocally
10 that you did not sign any checks for SML Bed-Stuy?

11 A That's correct. That's my belief at this time, yes.

12 Q That's not true; is it?

13 A Best of my recollection, it's true.

14 Q Is it true or not true?

15 A To the best of my recollection, I have no idea that I've
16 signed checks.

17 Q I'm going to show you Government's Exhibit 641.

18 A Okay.

19 I stand corrected, I signed a few checks.

20 MS. POSA: The Government moves to admit

21 Government's Exhibit 641 into evidence.

22 MR. SERCARZ: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 641 was received in evidence.)

25 MS. POSA: Victoria, could I ask you just to read

Hymowitz - cross - Posa

2040

1 back for us; right before lunch, where Mr. Hymowitz talked
2 about not having signed any checks.

3 MR. SERCARZ: Objection.

4 THE COURT: Sustained.

5 MS. POSA: I just want to make sure that what he
6 said was I did not sign checks versus I don't recall.

7 MR. SERCARZ: I object.

8 THE COURT: Counsel, the evidence is in the record.
9 You can proceed.

10 Q Well, isn't it true that you said you did not sign any
11 checks? You didn't say I don't remember; did you?

12 A I think you're correct.

13 Q You said that you were vice president of SML Bed-Stuy in
14 name only; correct?

15 A I said I was vice president for the purposes going on the
16 signature card in the event I needed to sign checks.

17 Q Which you said you never actually had to sign; right?

18 A That was my best recollection, correct.

19 Q Let's look at some of these checks you signed for SML
20 Bed-Stuy you say you forgot.

21 July 2nd, looks like 2008, based on this. That was
22 to Michael Freeman; right?

23 A Yes.

24 Q For \$23,395?

25 A Yes.

Hymowitz - cross - Posa

2041

1 Q And that's your signature?

2 A Yes, it is.

3 Q And this was from October 17th, 2006; correct?

4 A Yes.

5 Q To MCR?

6 A Yes.

7 Q Your signature?

8 A Yes.

9 Q Almost \$7,000?

10 A To MCR, yes.

11 Q February 1st, 2007; is that correct?

12 A Yes.

13 Q Is that your signature?

14 A Yes, it is.

15 Q To Hymowitz and Freeman?

16 A Yes.

17 Q And that was for about \$957?

18 A Correct.

19 Q I'd like you to look at this one, Lee Hymowitz?

20 A Yes.

21 Q \$23,398?

22 A Correct.

23 Q Your signature?

24 A Yes.

25 Q July 2nd, 2008?

Hymowitz - redirect - Sercarz

2042

1 A Yes.

2 Q Let me go back to the one I showed you for Mr. Freeman.

3 Same exact date; isn't it?

4 A Yes.

5 Q Precisely the same amount?

6 A Correct.

7 Q Your testimony is that you were not partners with

8 Mr. Freeman in this?

9 A I was not partners with Mr. Freeman, no.

10 MS. POSA: No further questions.

11 MR. SERCARZ: May I see the Exhibits that you showed
12 my client.

13 REDIRECT EXAMINATION

14 BY MR. SERCARZ:

15 Q You were asked some questions regarding the electronic
16 case filing system and whether or not you appeared on certain
17 criminal cases.

18 Do you recall that questioning?

19 A Yes.

20 Q You were asked about a gentleman named Kent Vecchio.

21 Do you recall that?

22 A Yes.

23 Q I'd like to show you --

24 MR. SERCARZ: Is this in evidence? I don't want to
25 do this the wrong way.

Hymowitz - redirect - Sercarz

2043

1 MS. POSA: It's not.

2 MR. SERCARZ: All right.

3 Q Does this refresh your recollection as to who
4 Mr. Vecchio's lawyer was? Please, tell the Ladies and
5 Gentlemen of the Jury.

6 A Michael Freeman.

7 MS. POSA: May I see that?

8 Q The Government showed you a document in the case of the
9 People of the State of New York versus Capaldo, et al.

10 Do you recall being shown such a document?

11 A Yes.

12 Q You were asked whether or not you had any participation
13 in this case.

14 Do you recall that?

15 A Yes.

16 Q I'd like to read from the document that the Government
17 showed you under the heading Counsel, the attorney
18 for Capaldo.

19 THE COURT: Is it in evidence?

20 MR. SERCARZ: No, I offer it in evidence as
21 Defendant Hymowitz's Exhibit, what are we up to -- D, E?

22 MR. EVANS: You're up to D.

23 MR. SERCARZ: Your Honor, may I put a tab on it when
24 I'm done?

25 THE COURT: Yes.

Hymowitz - redirect - Sercarz

2044

1 MS. POSA: No objection.

2 THE COURT: Received.

3 (Defendant's Exhibit Hymowitz D was received in
4 evidence.)

5 MR. SERCARZ: Can we have it put up on the screen?

6 MS. POSA: Would you please move it out a little bit
7 so we can see the rest of it?

8 Thank you.

9 Q I just want to call your attention to the particular
10 section under the heading Counsel. The attorney for
11 Mr. Capaldo was Lawrence Hochheiser, Esq.

12 Other attorneys involved in the matter were Joseph
13 Gentile, Esq. for the defendant Paul Kamen; George A. Farkas
14 for the defendant Aaron Lefkowitz, Harold Borg, Esq. for the
15 defendant Salvatore Savarese and Lee Hymowitz, Esq. for the
16 defendant Joseph Candiano and it goes on to list others.

17 Do you see that?

18 A Yes.

19 Q Do you recall the manner in which you were involved to
20 use the language of this heading on behalf of Mr. Candiano?

21 A I have no recollection of this matter at all.

22 Q To your knowledge, when an attorney appears in court on
23 behalf of a client for a routine adjournment, is the attorney
24 required to file a notice of appearance?

25 A Yes.

Hymowitz - redirect - Sercarz

2045

1 Q And would his name then appear on an electronic case
2 filing with regard to that case?

3 A I have no idea.

4 Q You were asked questions about mortgage rates?

5 A Yes.

6 Q Am I correct that in the private mortgage lending
7 business, among the factors that influence the rate are the
8 value of the collateral?

9 A Of course.

10 Q The duration of the loan?

11 A Yes.

12 Q Other factors affecting the risk; is that correct?

13 A Sure.

14 Q Would those factors have influenced the price that your
15 clients were prepared to charge to Wendell Walters, or whoever
16 was borrowing money in connection with his transaction in
17 Bedford Stuyvesant, in 2002 for an unimproved piece of
18 property?

19 A It was in Harlem.

20 Q I'm sorry, Harlem?

21 A The answer is yes.

22 Q All right. The Government asked you whether or not it's
23 not essential for you to keep bills for tax purposes.

24 Do you recall that question?

25 A Yes.

Hymowitz - redirect - Sercarz

2046

1 Q Are taxes paid by lawyers on the amount of money billed
2 or on the amount of money received?

3 A Received.

4 Q The Government asked you whether you conduct conflict
5 searches before taking on every case.

6 Do you recall that question?

7 A Yes. Yes.

8 Q All right. In the course of your practice, when you run
9 across an instance when you feel there is a conflict of
10 interest, what do you do about it?

11 A We would back out of the situation.

12

13 (Continued on following page.)

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Hymowitz - redirect - Sercarz

2047

1 EXAMINATION CONTINUES

2 BY MR. SERCARZ:

3 Q Now, in connection with Mr. Starzecki and the work that
4 was performed for the Lutheran Synod, did you tell us that
5 Mr. Starzecki was already -- withdrawn.

6 In connection with Mr. -- withdrawn.

7 In connection with the work that you did for the
8 Lutheran Synod, you told us you were hired as a real estate
9 advisor, is that correct?

10 A Yes.

11 Q The Lutheran Synod was already represented by counsel, am
12 I correct?

13 A Correct.

14 Q You referred to them on your direct examination, am I
15 correct?

16 A Yes.

17 Q The name of the firm is Capell, C A P E L L, Barnett and
18 there are a bunch of other names that go after that?

19 A Matalon and Schoenfeld, yes.

20 Q Mr. Starzecki was represented, according to the
21 government, by a gentleman named Georgoulis.

22 Do you recall that testimony?

23 A Yes.

24 Q Would that have precluded him from hiring you to do a
25 real estate closing or other work in connection with services

Hymowitz - redirect - Sercarz

2048

1 performed for the Lutheran Synod?

2 A No, of course not.

3 Q If the Lutheran Synod consented to having you participate
4 in a closing as Mr. Starzecki's lawyer, would there have been
5 any conflict of interest?

6 A No, of course not.

7 Q With regard to this issue of title, you mentioned that
8 recently you left the practice of law with Mr. Freeman, is
9 that correct?

10 A Yes.

11 Q And you went to work for a -- what you referred to, I
12 believe, as a multinational company, am I correct?

13 A Yes.

14 Q And in connection with your work there, you were given a
15 title, weren't you?

16 A Correct.

17 Q What's the name of your title?

18 A Vice President of Business Affairs.

19 Q That's for your first job in connection with that office,
20 am I correct?

21 A Yes.

22 Q Are you aware of who the United States Attorney is for
23 the Eastern District of New York?

24 A No.

25 Q Would it surprise you to learn that every other lawyer

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Hymowitz - redirect - Sercarz

2049

1 who works under the United States Attorney has the title
2 Assistant United States Attorney?

3 A That wouldn't surprise me, no.

4 Q That would include the two at this table, am I correct?

5 A Yes.

6 Q Do you know how many agents there are that work for the
7 Federal Bureau of Investigation?

8 A No.

9 Q Do you know what the title is for each and every one of
10 those agents?

11 A No.

12 Q Would it surprise you to learn that the title for each
13 and every one of those agents is Special Agent?

14 A No.

15 Q Do you know what is special about any one particular
16 agent as opposed to another?

17 A No.

18 Q No disrespect, Agent Richards.

19 A No idea.

20 Q You were asked about the use of a stamp that says draft
21 on it.

22 Do you recall that?

23 A Yes.

24 Q And would it be fair to say that the use of a stamp that
25 says draft on it is to distinguish documents that are in final

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Hymowitz - redirect - Sercarz

2050

1 form from those that are not, am I correct?

2 A That would be true, yes.

3 Q Would it also be fair to say that in the practice of law,
4 or indeed in any other practice, another way to distinguish a
5 document that is in final form from one that is not is whether
6 or not there is a signature at the bottom of the document?

7 A That's correct.

8 Q At the time you put the draft on Michael Freeman's desk,
9 was the document signed?

10 A No.

11 Q With regard to the retainer agreement, how much time did
12 you say you spent on this document?

13 A Between the phone call and the document, ten or
14 15 minutes.

15 Q How many years ago did you prepare this document?

16 A Seven years ago.

17 Q At the time were you aware that this document would
18 become the subject of court proceedings?

19 A No.

20 It's the worst ten minutes or 15 minutes of my life,
21 quite frankly.

22 Q Did you ever speak to Bogdan Starzecki about the payments
23 to the law firm of Hymowitz and Freeman?

24 A Mr. Starzecki and I never spoke about money ever.

25 Q That would be other than the occasions when he insisted

Hymowitz - redirect - Sercarz

2051

1 on retaining your firm, is that correct?

2 A We didn't talk about any specific type of money, just
3 that he wanted to use my services.

4 Q After speaking to Michael Freeman, was it your belief you
5 were being retained?

6 A Yes.

7 Q Was it your belief you were being retained to get
8 Mr. Starzecki bids?

9 A My understanding is he wanted me to get him access to
10 bids in the private sector whenever I could.

11 Q And that the agreement might also cover any ancillary
12 legal work that went along with that; is that correct?

13 A Yes.

14 Q The government offered into evidence Exhibit 642, which
15 are a series of bills in connection with the Lutheran Church.
16 The retainer agreement, I don't want to go dig it up,
17 Exhibit 600, was dated January 2, 2007.

18 Do you recall that?

19 A Yes.

20 Q Government Exhibit 600?

21 A Yes.

22 Q All right. In January of 2007 -- I'm sorry -- thank
23 you -- in January of 2007, you were clearly doing work for the
24 Lutheran Synod, isn't that correct?

25 A Actually, I started July of '06.

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Hymowitz - redirect - Sercarz

2052

1 Q This bill makes it clear, that you were performing work
2 in January of 2007, am I correct?

3 A Yes, sure.

4 Q It included meetings with Howie Capell and Robert
5 Barnett, am I correct?

6 A Yes.

7 Q Remind the jury who Howie Capell and Robert Barnett are?

8 A They are the attorneys for the Lutheran Synod.

9 Q It included meetings with Gary Mills, am I correct?

10 A Yes.

11 Q Incidentally, Mr. Mills has a title to, doesn't he?

12 A Yes.

13 Q He is the Reverend Gary Mills, am I correct?

14 A Yes.

15 He is the business head of the Lutheran Synod.

16 Q The work you were doing for the Lutheran Synod was real
17 estate advisory work, am I correct?

18 A Yes.

19 Q You billed, among other things, for calling title
20 companies, like Ridge Abstract, am I correct?

21 A Yes.

22 Q You billed for preparing projections, am I correct?

23 A Correct.

24 Q Projections as to what? Please tell the ladies and
25 gentlemen of the jury the kind of work you were doing.

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Hymowitz - redirect - Sercarz

2053

1 A That's what I was trying to explain before. One of the
2 things that I do to determine whether a project is viable is
3 what I said before. I crunch numbers and that's to prepare
4 projections. I try to find out what the cost of a project
5 would be, what the sales price would be, and then I can tell,
6 in this case the Lutheran Synod, that if we go forward with
7 the project, we are going to get the church built for free, we
8 are going to end up having a couple of million dollars in
9 profit, which the church can then hold and support that local
10 church for many years to come.

11 Q Do you recall in connection with your work for the
12 Lutheran Church a gentleman by the name of Rodrigo?

13 A Yes.

14 Q What did he do?

15 A He was the architect for the project.

16 Q The architect might have some interest or ability in
17 helping choose a general contractor for a job, isn't that
18 correct?

19 A That's true, yes.

20 Q Among the items you billed for were letters to Rodrigo,
21 am I correct?

22 A Yes.

23 Q Meetings with Gary Mills and conversations with Rodrigo
24 and his partners, isn't that correct?

25 A Correct, yes.

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Hymowitz - redirect - Sercarz

2054

1 Q Phone conversations together with Gary Mills and the
2 architect, Rodrigo, am I correct?

3 A Yes. Yes. I'm sorry.

4 Q All occurring at the end of 2006, am I correct?

5 A Yes.

6 Q All occurring at the time or shortly within the timeframe
7 of the closing on the Bedford Stuyvesant project, am I
8 correct?

9 A Right before it, yes.

10 Q All occurring at about the time when Bogdan Starzecki was
11 begging you to get him -- get him private work, isn't that
12 correct?

13 A Yes.

14 Q Do you recall who Bob Garcia was?

15 A Bob Garcia was a possible builder for the project.

16 Q From the firm of Fox and Garcia?

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q These are among the people that were bidding for
21 construction work on that job, isn't that correct?

22 A That's true, yes.

23 Q When you got off the phone with Michael Freeman in early
24 2007, according to the best of your recollection, January 2nd,
25 it was your belief that you were being retained on behalf of

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Hymowitz - recross - Posa

2055

1 Bob Starzecki to help him to get bids on projects such as the
2 ones reflected in these bills, isn't that correct?

3 A That's correct.

4 Q And did you perform in accordance with your contract?

5 A Yes; I got him two bids.

6 Q Were there other instances in which you attempted to get
7 him bids?

8 A I -- as I said before, we had numerous projects that I
9 was working on. I had many connections with bankers, mortgage
10 brokers, other attorneys. The real estate market was very,
11 very hot at the time and a lot of people were looking for good
12 builders, good architects. So it was very easy for me when I
13 was with people like that to say, if you are looking for a
14 good builder, I have somebody, if you are interested.

15 Q When the hundred-thousand-dollar check came in to the
16 Hymowitz and Freeman account, did you believe that that check
17 was a retainer payment or that that check was a kickback
18 payment in connection for the HPD project?

19 A A retainer agreement.

20 MR. SERCARZ: Thank you.

21 MS. POSA: May I have just a few more questions?

22 THE COURT: Go ahead.

23 MS. POSA: Your Honor, first I would like to move
24 the two criminal dockets that Mr. Sercarz just showed to
25 Mr. Hymowitz into evidence.

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Hymowitz - recross - Posa

2056

1 MR. SERCARZ: No objection.

2 THE COURT: I thought one came in.

3 MS. POSA: One did. There are two more.

4 THE COURT: Two more. All right.

5 MS. POSA: I am marking them government exhibits 900
6 and 901.

7 THE COURT: Okay.

8 (Marked in evidence.)

9 RECROSS-EXAMINATION

10 BY MS. POSA:

11 Q Mr. Sercarz just showed you the docket for Kent Vecchio,
12 correct?

13 A Yes.

14 Q And he said it refreshed your recollection to the fact
15 that he Michael Freeman's client, is that right?

16 A Yes.

17 Q What is it about this that makes you think that it was
18 just Michael Freeman who represented him?

19 A Because now that I am thinking about it, Kent Vecchio was
20 a client of Michael for a long time.

21 Q Seeing your own name reminded you that it was
22 Mr. Freeman?

23 A No. I just saw Mr. Freeman's name. You're asking me
24 things from many, many years ago. So it's not that easy to
25 just recall.

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Hymowitz - recross - Posa

2057

1 Q He also said that even if you represent somebody in an
2 adjournment or other routine matter your name is automatically
3 on the docket, right?

4 A That's my recollection from when I used to do criminal
5 work, yes.

6 Q Would you say that the date of somebody's guilty plea is
7 a routine matter for them?

8 A No.

9 Q Did you not represent Mr. Vecchio when he pled guilty?

10 A I have no recollection of that.

11 Q Do you see this entry, cause for pleading, that means it
12 is a guilty plea, right?

13 A I don't know that that's true or not.

14 Q Why don't you read the rest of the entry.

15 A If I'm looking, this is from 26 years ago.

16 Q What's that?

17 A Is this from like 26 years ago, isn't it? Sixteen years
18 ago?

19 Q Twenty-six years ago?

20 A How many years ago? Sixteen years ago. I'm sorry.

21 Q Right.

22 Do you have any reason to believe that this would
23 not be accurate, that you represented Mr. Vecchio at his
24 guilty plea?

25 A If that's what it says, that's what I did.

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Hymowitz - recross - Posa

2058

1 Q And you also represented Bruce Griffith at his guilty
2 plea, isn't that right?

3 A That I did, yes. He was a friend and he was a good
4 client.

5 Q That's Government Exhibit 900, change of plea hearing,
6 defendant present with attorney Lee Hymowitz, correct?

7 A That's from 18 years ago.

8 Q You seem to have no trouble remembering it yesterday when
9 you said unequivocally that you have done no criminal defense
10 work for 34 years, right?

11 A You have refreshed my recollection.

12 Q Just so I am clear, it has been a little hard to follow
13 this, you are saying --

14 MR. SERCARZ: I object to the comment. Move it be
15 stricken.

16 THE COURT: Yes.

17 MS. POSA: I'm sorry.

18 THE COURT: The jury is directed to disregard any
19 comment from counsel.

20 Counsel, just ask questions.

21 MS. POSA: I apologize.

22 Q One of the parts of your representation of Bogdan
23 Starzecki was to help him get a bid with Lutheran Synod, is
24 that right?

25 A I was supposed to try to get him bids wherever I could

Hymowitz - recross - Posa

2059

1 get him bids in the private sector.

2 Q Did that include Lutheran Synod?

3 A Surely.

4 Q And this was occurring at the exact same time that you
5 were working for Lutheran Synod as a real estate consultant,
6 correct?

7 A Correct.

8 Q Now, Bogdan Starzecki's best interest would be to
9 maximize the amount of money that he got, correct?

10 A Not if he wanted the job.

11 Q I said, his best interest would be to get as much money
12 as he could, not the biggest bid, but to get as much money as
13 he could, right?

14 A I'm not understanding what you're asking. For someone to
15 win a bid they have to have the lowest best bid, not the
16 highest bid.

17 Q Are you saying that a private contractor doesn't have an
18 interest in trying to get paid as much as possible?

19 A Not if he's -- not if it's in a competitive bid. He's
20 going to have to sharpen his pencil and come in with the
21 absolute best price he can come up with.

22 Q That's why there was no conflict between representing
23 Bogdan Starzecki, the possible bidder, and Lutheran Synod, the
24 people who would be getting the bid?

25 A I was part of a committee of probably a half a dozen

Hymowitz - recross - Posa

2060

1 people along with an architect that would review all the bids
2 and make a decision.

3 Q So you would have been reviewing the same bid on behalf
4 of Lutheran Synod that you were trying to help Bogdan
5 Starzecki win, is that right?

6 A I would not be the one reviewing it. The architect would
7 be the one reviewing the bid, making the decisions after
8 advising the committee.

9 Q You just said you were on that committee, right?

10 A As an advisor, yes.

11 Q So you would be reviewing Mr. Starzecki's bid?

12 A If you want to say it that way.

13 Q Your client's bid?

14 A Yes.

15 MS. POSA: No further questions.

16 MR. SERCARZ: Nothing further.

17 Thank you.

18 MR. DiCHIARA: Nothing.

19 MR. EVANS: No questions.

20 THE COURT: Thank you.

21 You may step down.

22 THE WITNESS: Thank you.

23 (Witness steps down.)

24 MR. SERCARZ: The defendant Hymowitz calls Charlotte
25 Lee. We will get her, Your Honor.

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Lee - direct - Sercarz

2061

1 THE COURT: All right. Before you sit down, would
2 you raise your right hand?

3 (The witness is duly sworn/affirmed by court.)

4 THE COURT: Have a seat and please say your name and
5 spell it for the court reporter.

6 THE WITNESS: Okay. My name is Charlotte Lee. It's
7 C H A R L O T T E, and my last name is Lee, L E E.

8 MR. SERCARZ: May I inquire, Your Honor?

9 THE COURT: Yes.

10 DIRECT EXAMINATION

11 BY MR. SERCARZ:

12 Q Good afternoon, Ms. Lee.

13 A Hi.

14 Q Please tell the ladies and gentlemen of the jury what you
15 do for a living.

16 A I'm currently a coach, an executive coach.

17 I started my life as an investment banker from 1980
18 to '98 and then I left in '98 to start my own firm.

19 Then in 2007 I joined a consulting firm that has 250
20 offices in 85 countries and I'm one of the senior vice
21 presidents in the New York office.

22 Q Tell me about the firm that you had before you became a
23 vice president of this large firm.

24 By the way, the name of the firm is Lee Hecht
25 Harrison, is that correct?

GR

OCR

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CRR

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Lee - direct - Sercarz

2062

1 A Yes. No relation. The Lee is not me.

2 Q Nor is it my client, is that right?

3 A Right.

4 Q We are dealing with that on the record.

5 A Right. Nothing to do with me.

6 Q Okay. And Hecht is H E C H T, is that correct?

7 A Correct. And Harrison.

8 Q Please.

9 A So the company I did before I worked on two things. One
10 was strategic planning and the other was coaching. I did it
11 both in the not-for-profit sector and the for profit corporate
12 sector. So it's coaching people who want to be promoted and
13 people who want to get jobs. That's on the coaching side.

14 And strategic planning was for the United Way and
15 nature conservancy companies that are non-profits that want to
16 grow or get more money in and then I worked with several of
17 them, including Habitat.

18 Q In connection with your business work, have you ever
19 appeared on television?

20 A For work I was on CNBC.

21 Q Have you also appeared on Bloomberg Radio and NPR?

22 A Yes. That's radio and then -- but not -- that wasn't TV.
23 But yes.

24 Q Have you been interviewed by the Wall Street Journal in
25 connection with your work?

GR

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CSR

Lee - direct - Sercarz

2063

1 A Yes, I have. I have.

2 There is a lot of unemployment and so I get called a
3 lot by the Wall Street Journal, the New York Times, Financial
4 Times and other newspapers, to talk about unemployment and how
5 to get Americans back to work, frankly.

6 Q Do you know Lee Hymowitz?

7 A I do.

8 Q Please point him out for the ladies and gentlemen of the
9 jury.

10 A He's sitting in the middle of the long table on the end.

11 Q Can you tell the ladies and gentlemen of the jury how it
12 is that you came to be acquainted with my client Lee Hymowitz?

13 A Sure.

14 One of the non-profits I worked with starting in
15 1998 was an organization called Habitat For Humanity which
16 builds houses for folks who are working Americans but can't
17 afford to get a house on their own. And so we raised money
18 and we buy the land, we buy the sheetrock and we put these
19 homes up.

20 And Lee and I met because he was friends with the
21 president before me, who was a nun and they met in an
22 interfaith meeting. She brought him to the board meeting and
23 I met him there. And we worked together on many, many, many
24 homes during the years that I have known him, for almost
25 15 years.

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Lee - direct - Sercarz

2064

1 Q Did he assist you in any administrative way in addition
2 to the work he actually did on the homes?

3 A Yes.

4 That's actually why he's pretty unusual. Most
5 people just want to work on the house and build and come on
6 Saturdays and hit with a hammer, which is fine. But Lee did
7 both jobs. He was volunteer on the site and he also did
8 volunteer work as a board member and as a committee member and
9 as a copresident with me as well.

10 Q Can you give the ladies and gentlemen of the jury an idea
11 of the timeframe during which you were in contact with Lee for
12 the work on Habitat for Humanity?

13 A Sure. I'd say, it was --

14 THE COURT: Just a moment. I think we need a
15 recess.

16 MR. SERCARZ: Need a break?

17 THE COURT: Yes. We need an afternoon recess. I'm
18 sorry to interrupt in the middle of your answer.

19 THE WITNESS: Okay.

20 THE COURT: We will take ten minutes.

21 Thank you.

22 (Continued on next page.)

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Lee - direct - Sercarz

2065

1 (The following occurred in the absence of the jury.)

2 THE WITNESS: Should I stay here?

3 THE COURT: No. You can leave the witness stand and
4 come back in ten minutes.

5 THE WITNESS: Okay.

6 THE COURT: All right, counsel, ten minutes.

7 (Recess taken.)

8 (The following occurred in absence of the jury.)

9 THE COURT: All right. Shall we bring in the jury?
10 Counsel, is everyone here? Can we bring in the jury?

11 MR. SERCARZ: I'm sorry, Your Honor. I didn't hear
12 Your Honor.

13 THE COURT: Can we bring in the jury?

14 MR. SERCARZ: Yes.

15 THE COURT: Okay. Have a seat, counsel.

16 Counsel, come to the side, please.

17 (Side bar.)

18 THE COURT: Apropos of our talk, I don't want
19 anybody to make any jokes about dogs or someone mentioned the
20 name of the dog. Don't say it because this juror is very
21 sincere about her connection to the dog. I don't want her to
22 think that any of us is treating this in the slightest way
23 frivolously.

24 Okay. We have another problem. Juror number five,
25 just apparently threw up in the bathroom. All of the other

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Lee - direct - Sercarz

2066

1 jurors are helping him. We've offered him a ginger ale. He's
2 ready to come in. They're all lined up. But Victor told me
3 we should all be aware that he is not feeling well. So that's
4 why we had to take the break.

5 If he's okay, some temporary thing, I don't know,
6 what he ate at lunch, and we can go ahead. If not, we'll have
7 to stop. I just want to let you know.

8 MR. SERCARZ: Fine.

9 There is a stomach virus going around. We have
10 heard a lot about it.

11 Your Honor, if the Court wishes to tell him that if
12 he just puts his hand up we'll stop right where we are. If he
13 has to leave again, I'm good with that. I don't have much to
14 do with this -- much more to do with this witness anyway.

15 THE COURT: All right. We may be able to stop and
16 come back, we don't know, if he takes a recess. We will see.
17 We have very willing jurors.

18 MR. CAPOZZOLO: Maybe this is helpful with the
19 schedule. Mr. DiChiara and I have talked. It doesn't appear
20 Mr. Freeman is going to put on case. It looks like the rest
21 of the case would be this witness and then the government
22 would put on Mr. Sicignano and then Agent Richards and then
23 assuming there is no further --

24 THE COURT: Your request to put on the Bureau of
25 Prisons person, you are withdrawing that?

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Lee - direct - Sercarz

2067

1 MS. POSA: It's really to expedite matters.

2 THE COURT: I wouldn't allow it anyway, if it makes
3 you feel better.

4 MR. SERCARZ: With regard to Agent Richards, if I
5 understand the law correctly, he can testify provided that his
6 testimony does not involve extrinsic evidence of a collateral
7 matter.

8 THE COURT: Like what?

9 MR. SERCARZ: Well, that's my point really. We
10 would like to know ahead of time which aspects of Mr. Dunn's
11 denial he is going to be impeaching. If it goes to the heart
12 of the case, then it seems to me he's permitted to do it. If
13 it purely deals with collateral stuff, he may not be permitted
14 to do it.

15 THE COURT: I don't know what you are talking about.

16 MR. SERCARZ: I am dealing in the abstract. I don't
17 know how much they have in store for Agent Richards.

18 MS. POSA: I can give a proffer. He is short.

19 He is going to testify about Mr. Dunn's condition,
20 the fact that the statement that he made as he read it earlier
21 was accurate. He is going to testify about the two additional
22 statements that are now in evidence.

23 I think that's it.

24 THE COURT: Okay.

25 MR. EVANS: Your Honor, I have a difficulty with

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Lee - direct - Sercarz

2068

1 that because I am not sure --

2 THE COURT: With what?

3 MR. EVANS: With Agent Richards coming back on to
4 the stand to say fundamentally what he's had an opportunity to
5 say on the case already. He can't testify to clarify the
6 issue which I thought the government was concerned about,
7 which is that Mr. Dunn said he didn't recall. Agent Richards
8 is not a medical professional. He didn't undertake any
9 medical examination.

10 We plowed this field in May of 2013. I looked at
11 that testimony last night. Mr. Dunn didn't testify in that
12 hearing and I looked at the testimony he gave on direct and on
13 cross and what he said was, I don't have a clear recollection
14 of that or I was befogged I think was the last thing he said
15 about it.

16 I don't know how anything Agent Richards can say is
17 substantive to the issue of Mr. Dunn's memory or recollection.

18 THE COURT: I disagree. I will allow the agent to
19 testify on that subject.

20 MR. EVANS: What's -- what can he testify to about
21 Mr. Dunn's recollection?

22 THE COURT: He'll testify as he did at the
23 suppression hearing, I assume.

24 MS. POSA: Mr. Dunn essentially called him a liar.

25 MR. EVANS: No. Mr. Dunn didn't mention him.

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Lee - direct - Sercarz

2069

1 MS. POSA: He didn't say any of those things, which
2 means what Mr. Richards was testifying about was fictional.
3 He has a right to say he did say those things.

4 THE COURT: No. We are talking about him talking
5 about the condition.

6 MR. EVANS: We are talking about the condition. If
7 they are going to talk about his condition and limit it to
8 Agent Richards' perception of his condition?

9 THE COURT: That's what he is going to talk about.

10 MS. POSA: You can cross-examine him.

11 MR. EVANS: I will.

12 MS. POSA: I'm sure you will.

13 THE COURT: Let's bring in the jury.

14 (Continued on next page, in open court.)
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Lee - direct - Sercarz

2070

1 (In open court; outside the presence of the jury.)

2 THE COURT: Ms. Lee, would you take the witness
3 stand again, please.

4 THE CLERK: All rise.

5 (Jury enters.)

6 THE CLERK: Thank you. Please be seated.

7 MR. SERCARZ: Your Honor, may I have the last
8 question reread since I was interrupted?

9 THE COURT: Yes. Of course.

10 (Record read.)

11 BY MR. SERCARZ: (Continuing)

12 Q Please.

13 A From 2000 to -- I started in 1998. I met him a year
14 later. So maybe 1999 to 2008. Something like that.

15 Q Now, there was a period in there where you were on the
16 board of directors of Habitat for Humanity, correct?

17 A Yes.

18 Q Were you both on the board at the same time?

19 A Yes.

20 Q When was that?

21 A During that time frame.

22 Q All right. And was there a period during which you were
23 the president or chief executive officer?

24 A I was. I was the president for eight years during that
25 time period.

Lee - direct - Sercarz

2071

1 Q All right. Did Mr. Hymowitz ever become president?

2 A Yes. We were -- I was president and then we were
3 co-presidents for a year, and then he was president the
4 following year and we flip-flopped and I was the co-president.

5 Q Fine. During the course of your relationship with
6 Mr. Hymowitz, did you have an opportunity to observe him and
7 to discuss with him budget issues and the like?

8 A Tons. It's a big problem with not-for-profits because
9 we're all volunteers and it's fundraising basically, not
10 completely, but it's about \$100,000 that you have to raise
11 each year to put up a house in Nassau County which we raised
12 together. And we had governance issues and policy issues and
13 real estate and getting the land and getting people to come to
14 the gala and getting people to come to the lunch and getting
15 people to join the board and getting other board members to
16 work because a lot of the time, you have 15 people on the
17 board, but there would be three or four of us, frankly, you
18 know, doing a lot of the work. And it was me and Lee and, you
19 know, one or two other people.

20 Q During the course of your relationship with Mr. Hymowitz,
21 have you been able to form an opinion of his character for
22 honesty and fair dealing?

23 A Absolutely. We spent an enormous amount of time
24 together.

25 Q What is your opinion?

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RMR

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Lee - direct - Sercarz

2072

1 A And he is one of the most wonderful people I know and I
2 know a lot of people. He's incredibly selfless. So no matter
3 what I say -- I'd call from work and say, We've got a problem
4 on the site, you know, and I can't get out. Can you get out?
5 Yes. Can you go Saturday? Yes. The woman that was donating
6 lunch couldn't get to the site, he'd run off and buy pizza for
7 everybody on the site.

8 It was constantly. It was all the time and it was
9 not just about time and money and talent, but it was the
10 attitude all the time, constantly. I couldn't have done it
11 without him actually, frankly.

12 Q I just want to break that answer up. Forgive me for
13 being a lawyer about this, but I'm inquiring as to your
14 opinion regarding two different character traits. Let me tell
15 you what they are and we'll go one at a time.

16 A Okay.

17 Q One is honesty and fair dealing and the other is
18 selflessness or generosity. Okay?

19 With regard to the character trait of honesty and
20 fair dealing, do you have an opinion on his character for
21 that?

22 A Big time. I think we work with a very difficult
23 constituency. I think there's a ton of time when we're
24 working with the Nassau County people, police officers, a
25 variety of folks, in what we do as board members of Habitat

Lee - cross - Capozzolo

2073

1 for Humanity and it's a worldwide organization that has very
2 strict rules about what you can and cannot do in order to be a
3 habitat affiliate and I have utmost respect and know that Lee
4 was honest in everything we did.

5 And we did a lot of things with, like running a
6 small company. It's a nonprofit, but we're basically running
7 a small company. And I feel 100 percent that he was
8 constantly honest and, I just -- I'm not going to waiver from
9 that. I don't have more to say. If there's something else,
10 you should ask me.

11 Q Have you also been able to form an opinion regarding his
12 character for generosity, selflessness?

13 A Yeah, that's pretty much off the charts. He and my
14 brother get the award for that. I have never seen anybody
15 give of themselves constantly and to strangers. The people
16 who get the Habitat homes are strangers to us. We don't know
17 them. And he's the same way with me as he is with them. So
18 whether he's buying us all pizza or them, it doesn't matter.
19 That's just what, kind of what Lee does.

20 MR. SERCARZ: Thank you very much. The government
21 may have some questions.

22 CROSS-EXAMINATION

23 BY MR. CAPOZZOLO:

24 Q Good afternoon.

25 A Hi.

Lee - cross - Capozzolo

2074

1 Q Very few questions.

2 A Okay.

3 Q Is Habitat for Humanity in Nassau County, correct?

4 A Yes.

5 Q In the course of your dealings with Mr. Hymowitz --

6 THE COURT: Can we get --

7 MR. CAPOZZOLO: I'm sorry.

8 THE COURT: Thank you.

9 Q In the course of your dealings with Mr. Hymowitz, were
10 you at all involved in his business, real estate activities?

11 A No.

12 Q Were you familiar with any of his legal work that he
13 performed in New York City?

14 A No.

15 Q Any of his dealings with any City governments in New York
16 City?

17 A No.

18 MR. CAPOZZOLO: Thank you very much.

19 THE WITNESS: Sorry. Am I free to go?

20 THE COURT: Yes, you are. Unless, Mr. Sercarz, do
21 you have anything else?

22 MR. SERCARZ: No.

23 THE COURT: Thank you. You may step down.

24 THE WITNESS: Thank you.

25 (Witness steps down.)

D. Sicignano - direct - Capozzolo

2075

1 MR. SERCARZ: Defendant Hymowitz rests, Your Honor.

2 MR. DiCHIARA: Your Honor, Mr. Freeman has chosen to
3 rest.

4 MR. CAPOZZOLO: The government calls Dorothy
5 Sicignano.

6 THE CLERK: Good afternoon. Before you sit down,
7 I'm going to ask you to raise your right hand.

8 THE WITNESS: Sure.

9 (Witness sworn.)

10 THE CLERK: Thank you. Please be seated.
11 Please state your full name for the record.

12 THE WITNESS: Dorothy Anne Sicignano.

13 THE COURT: Can we get the spelling of your last
14 name?

15 THE WITNESS: S-I-C-I-G-N-A-N-O.

16 THE CLERK: Thank you.

17 MR. CAPOZZOLO: May I proceed, Your Honor?

18 THE COURT: Yes.

19 DOROTHY SICIGNANO ,

20 called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CAPOZZOLO:

24 Q Good afternoon, Ms. Sicignano. How are you?

25 A Fine. Thank you.

D. Sicignano - direct - Capozzolo

2076

1 Q And what part of the City do you currently live?

2 A New York City.

3 Q Which Borough?

4 A Manhattan.

5 Q And how long have you been living in New York City?

6 A Probably going on 22 years.

7 Q And do you know Lee Hymowitz?

8 A Yes, I do.

9 Q And can you just point him out for us?

10 A He's there. (Indicating.)

11 MR. SERCARZ: We stipulate to the identification.

12 Q Ms. Sicignano, how long have you known Mr. Hymowitz?

13 A I would say 27 years.

14 Q And in the course of your relationship with Mr. Hymowitz,
15 is part of that relation centered on a piece of real estate
16 property that you jointly own with Mr. Hymowitz?

17 A Yes.

18 Q And is it correct that you are a minority shareholder in
19 that piece of property?

20 A Yes.

21 Q What percentage do you own?

22 A I own eight and a quarter percent.

23 Q And approximately how much does Mr. Hymowitz own to your
24 knowledge?

25 A Thirty-three percent.

D. Sicignano - direct - Capozzolo

2077

1 Q And have you had an opportunity during the course of your
2 joint ownership of this property to interact with
3 Mr. Hymowitz?

4 A Yes, I have.

5 Q And over what period of time?

6 A In the past five years.

7 Q And what about --

8 A More so.

9 Q More so in the past five years?

10 A Yes. Our original tenant had left.

11 Q How was it that you originally came into the possession
12 of the share that you have in this property?

13 A I inherited it from my late mother.

14 Q And did she also -- was she also someone who had contact
15 with Mr. Hymowitz?

16 A I, I, I don't think so.

17 Q What about your father?

18 A Yes.

19 Q Was your father involved in the obtaining of the
20 property?

21 A Yes.

22 Q And the property is located at 510 Gates Avenue, is that
23 correct?

24 A Yes, it is, in Bedford-Stuyvesant, Brooklyn.

25 Q So what I want to ask you now is from the time you've

D. Sicignano - direct - Capozzolo

2078

1 known Mr. Hymowitz and interacted him, have you formed an
2 opinion about his character for honesty?

3 A Yes, I have.

4 Q And what is that?

5 A Mr. Hymowitz lies with impunity. He is also a predator
6 in my opinion.

7 Q And with respect to if there's an issue involving money
8 and Mr. Hymowitz's honesty about money, what would be your
9 opinion?

10 A It's Mr. Hymowitz's way or no way.

11 Q And in the same regard, if you had -- have you had an
12 opportunity to form an opinion about Mr. Hymowitz's character
13 for generosity, have you had an opportunity to form an opinion
14 of that based on your years of knowing Mr. Hymowitz?

15 A Yes, he's very generous with my money.

16 Q To you or to --

17 A Not to me though. To cover various --

18 Q I don't want to get into the details.

19 A Okay. Okay.

20 Q But when you say he's very generous with your money, does
21 that mean he gives it to you, that he's generous to you or
22 not?

23 A No.

24 MR. CAPOZZOLO: I have no other questions.

25

D. Sicignano - cross - Sercarz

2079

1 CROSS-EXAMINATION

2 BY MR. SERCARZ:

3 Q Ms. Sicignano, your first name is Dorothy, is that
4 correct?

5 A Yes, it is.

6 Q People also know you by the name Bebe, is that correct?

7 A Yes, they do.

8 Q Your opinion of my client Mr. Hymowitz is based on your
9 own dealings with him with regard to this Gates Avenue
10 project, am I correct?

11 A Yes.

12 Q Okay. With regard to Gates Avenue, just by way of
13 background, Gene Sicignano was your dad, am I correct?

14 A Yes, he is, sir.

15 Q He is. He's still alive?

16 A Yes, he is, sir. He's 86 years old.

17 Q I'm sorry?

18 A He's 86 years old. He's a retired court officer, a
19 veteran of World War II and a man with an high school
20 equivalency diploma.

21 Q Thank you.

22 And he and Mr. Hymowitz and Mr. Freeman and a law
23 partner of theirs name Lou Marett together purchased some
24 properties, is that correct?

25 A My father is -- he never was a shareholder in 510 Gates

D. Sicignano - cross - Sercarz

2080

1 Avenue.

2 Q Well, the properties that were purchased were all put in
3 the names of the wives of those who purchased them?

4 A Yes, that's correct.

5 Q Your mom was a shareholder?

6 A Yes.

7 Q Am I right?

8 A Yes, sir.

9 Q And they each had more or less, the wives I'm talking
10 about, a one quarter interest in these properties, is that
11 correct?

12 A Well, the 510 Gates Avenue, my mother's share was
13 22 percent.

14 Q Okay. The property was leased to a not-for-profit, am I
15 correct?

16 A Yes, sir.

17 Q And that not-for-profit lost its funding, am I correct?

18 A I was told by Mr. Hymowitz to come to his office for a
19 meeting.

20 Q Well, let me ask you this because I would like to try and
21 keep the answers confined to the questions. If you don't know
22 the answer, just say I don't know. If I'm wrong, tell me, but
23 my question is do you know --

24 A To the best of my knowledge, they went bust.

25 Q Okay. And as a result, the property couldn't pay its

D. Sicignano - cross - Sercarz

2081

1 real estate taxes and it wasn't generating any money for the
2 investments, is that correct?

3 A Well, Mr. Hymowitz was the property manager for the
4 property and from what I was told by him, the not-for-profit
5 did not pay their taxes in ten years and it was very funny
6 that we now owe \$2.2 million in real estate tax and when I
7 asked Mr. Hymowitz why this was never checked on, I got
8 answers for who --

9 Q Let me hold up. The government can elicit information if
10 it's appropriate.

11 A Okay.

12 Q I just want to know whether after the not-for-profit
13 left, the property stood vacant for a while, is that correct?

14 A That's correct.

15 Q All right. Now, when the property stood vacant, somebody
16 came in to manage the property, am I correct?

17 A What do you mean, to manage it?

18 Q Well, your dad came in to take care of the property while
19 it was vacant, isn't that correct?

20 A No. I had no knowledge -- until they hired -- I found
21 out that Mr. Hymowitz hired my father to repair the roof of
22 510 Gates Avenue. An 82-year old man is not a roofer. And I
23 got a call from my dad one day, he --

24 Q Don't tell us about the telephone calls.

25 A Okay. Sure.

D. Sicignano - cross - Sercarz

2082

1 Q I'm leaving --

2 A I'm sorry. This is very limited and confusing so I would
3 like to do it properly.

4 Q If you're confused about anything, try and let me know.
5 Okay?

6 A Okay.

7 Q The company 510 Gates Avenue Corporation also had an
8 accountant, am I correct?

9 A Correct.

10 Q And the accountant was indeed your family's accountant,
11 isn't that correct?

12 A He's my accountant.

13 Q Okay.

14 A Not my family's.

15 Q Okay. And he was one of the people charged with looking
16 after the money here, am I right?

17 A I assume he just -- to my knowledge, he just does our tax
18 return. He's not in charge of distributing the money that
19 comes in to the corporation or anything of that nature.

20 Q Efforts were made to either rent or sell that property,
21 am I correct?

22 A I personally brought an offer in the table to
23 Mr. Hymowitz.

24 Q And it would be fair to say that you're not happy with
25 the way that Mr. Hymowitz chose to dispose of this property,

D. Sicignano - cross - Sercarz

2083

1 isn't that correct?

2 A Correct.

3 Q Okay. You've said that Mr. Hymowitz was a predator. Was
4 that your word? I want to get the word right.

5 A That's correct, sir.

6 Q And that he was dishonest, is that correct?

7 A Well, he has lied to me.

8 Q Okay.

9 A That's dishonesty.

10 Q And what other bad things did you say about Mr. Hymowitz?

11 A That's all.

12 Q And this opinion that you have of Mr. Hymowitz's
13 character, this is something that you've recognized for a
14 while, am I correct?

15 A Yes.

16 Q You'd agree with me, would you not, that somebody who's a
17 predator and a liar and an untrustworthy person should never
18 serve in a responsible position for a company that's managing
19 a property, am I right?

20 A I don't understand what you mean. Could you explain the
21 last part.

22 Q Well, a person like the one you're describing should
23 never be on the board of directors or the managing partner of
24 a company whose job it is to manage property to the benefit of
25 both the majority and the minority shareholders, am I right?

D. Sicignano - cross - Sercarz

2084

1 A Yes.

2 Q Okay. And, therefore, given your strong feelings about
3 Mr. Hymowitz, you would never have been in favor of
4 Mr. Hymowitz being elected to any position of authority in
5 connection with 510 Gates Avenue Corporation, am I right?

6 A That's true.

7 Q Okay. I'd like to show you an e-mail. I'm going to mark
8 it Hymowitz Exhibit E for identification.

9 MR. SERCARZ: Witness only.

10 THE COURT: There's nothing coming up.

11 THE WITNESS: I see it, Your Honor.

12 Q Now, am I correct that this e-mail was written by you?

13 A Yes, sir.

14 Q That it was written to Lou Marett who was one of the
15 individuals whose wives had a share in that property?

16 A That's correct.

17 Q Pardon?

18 A That's correct.

19 MR. SERCARZ: I offer it into evidence as Hymowitz
20 Exhibit E.

21 A This is called sarcasm, sir.

22 THE COURT: I don't have the document. Is there any
23 objection to it?

24 Counsel, you have to show the document. If you are
25 offering it into evidence, you have to show it to the other

Side Bar

2085

1 side.

2 MR. SERCARZ: He's seen it. May we approach with
3 the document, Your Honor. Would that help?

4 THE COURT: I can't get it up here.

5 MR. SERCARZ: Would you rather I put it back on the
6 screen?

7 THE COURT: No, it doesn't matter.

8 Is there any objection to it?

9 MR. CAPOZZOLO: Yes.

10 (The following occurred at side bar.)

11 MR. CAPOZZOLO: My objection is that the proper
12 foundation is to ask did she write an e-mail that states the
13 following. I think she's going to say yes and her explanation
14 was sarcasm so the document doesn't need to come in. I don't
15 think she's denying she said it. I think that's what the
16 point was. Mr. Sercarz has to show her and let her see is
17 she'll say yes, I sent it. That's all.

18 MR. SERCARZ: All right.

19 THE COURT: All right.

20 MR. SERCARZ: Thank you.

21 (Side bar ends.)

22 (Continued on next page.)

23

24

25

Sicignano - cross - Sercarz

2086

1 BY MR. SERCARZ:

2 Q Ms. Sicignano, if I can ask you one more question before
3 we start discussing the document, how is your relationship
4 with Lou merit I?

5 A I have no contact with Lou Marett.

6 Q None at all?

7 A That's correct.

8 Q Do you correspond with Mr. Marett?

9 A Not lately. I have a power of attorney that I gave to my
10 boyfriend so he had been doing that.

11 Q But you certainly don't have a close personal
12 relationship with Mr. Marett, is that correct?

13 A I like, I like Lou. I have nothing personal against him.

14 Q Okay. Isn't it a fact that on November 27, 2012, you
15 sent an e-mail to Lou Marett in which you stated and I quote,
16 I will propose at the next shareholders meeting that we elect
17 Lee and his wife a majority shareholder back to the
18 corporation, at least he gets it, thanks for all of your help?

19 A That was meant in sarcasm.

20 Q Well, let's talk about this notion that this was meant in
21 sarcasm.

22 It was addressed to Mr. Marett, am I correct?

23 A Yes.

24 Q And the gentleman with whom you have no personal
25 relationship, is that correct?

Sicignano - cross - Sercarz

2087

1 A Well, he --

2 Q Is that correct?

3 A As of right now, I have no relationship with him.

4 Q You had a relationship with him?

5 A Well, yes.

6 Q Excuse me. You've got to let me finish.

7 THE COURT: No. You have to let her finish her
8 answer. Then you can ask another question.

9 A Yes. At the time, I was having a relationship with Lou
10 Marett.

11 Q And you felt your relationship was such that you could
12 engage in sarcasm, is that correct?

13 A Yes.

14 Q Do you recall the e-mail that Mr. Marett sent to you and
15 your brother that elicited this e-mail?

16 A No, sir. I don't recall.

17 Q Would it refresh your memory if I told you that
18 Mr. Marett wrote an e-mail saying: Actually, Raymond, I
19 wanted to have an informational meeting to see what everyone
20 thought. We don't have to determine the future direction of
21 anything. Please turn down the vitriol. We are on the same
22 team. I am mostly concerned with the meeting with DOF re
23 taxes which should be soon. Signed, Louis Marett, attorney at
24 law.

25 A Yes.

Sicignano - cross - Sercarz

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1 Q Do you recall that that's the e-mail that you got?

2 A I do now.

3 Q And did you feel at the time that that invited a
4 sarcastic response?

5 A Yes.

6 Q You're angry at my client, am I correct?

7 A I don't deny that, yes.

8 Q You're not happy with the disposition of the building, am
9 I correct?

10 A I'm not happy.

11 Q Okay. It turns out that my client did sell the building,
12 am I correct?

13 A That's what I was told.

14 Q And it is based upon this financial transaction, and this
15 one alone, that you are basing my, your opinion of my client's
16 character for honesty and fair dealing, is that right?

17 A No. I base it back from 27 years ago when my father
18 first brought him another deal who brought his partner at the
19 time another deal and then somehow your client took my
20 family's shares away from us and took over that whole deal as
21 though he had anything to do with it.

22 Q So you feel that 27 years ago, Mr. Hymowitz engaged in a
23 theft from your family, that's what you believe?

24 A He engaged in an immoral act, I would like to call it
25 that, and yes, I have a long memory.

Sicignano - cross - Sercarz

2089

1 Q But yet, your father's memory apparently isn't that long
2 because he was willing to go into partnership with
3 Mr. Hymowitz, Mr. Marett, Mr. Freeman and others, isn't that
4 correct?

5 A Well, sadly --

6 Q Isn't that correct?

7 A I guess, yes, that's correct.

8 MR. SERCARZ: I have no further questions of this
9 witness.

10 MR. CAPOZZOLO: Mr. DiChiara, no cross?

11 MR. DiCHIARA: I have no cross.

12 REDIRECT EXAMINATION

13 BY MR. CAPOZZOLO:

14 Q You're a minority shareholder of this 510 Gates Avenue,
15 correct?

16 A Yes, sir.

17 Q Were you allowed to attend board meetings?

18 A They never had a board meeting at the time until about
19 two thousand and, I believe 2011.

20 Q And you had -- how did you find out that the board had
21 taken actions if you weren't present at these meetings?

22 A I would have to ask for information, you know.

23 Q They didn't --

24 A We had -- I can't remember the exact year. Mr. Hymowitz
25 was in charge of everything. There were no meetings. There

Sicignano - cross - Sercarz

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1 was no information given. Then when Mr. Hymowitz and
2 Mr. Freeman got indicted --

3 Q I only want to talk about Mr. Hymowitz.

4 A I'm sorry.

5 Q With regard to Mr. Hymowitz?

6 A When he got indicted --

7 Q Let me ask the questions. Okay.

8 MR. CAPOZZOLO: Because if I can lead, Judge.

9 THE COURT: Yes. Yes.

10 MR. CAPOZZOLO: I just want to be clear.

11 THE COURT: Just listen to the question and then
12 answer it.

13 THE WITNESS: Yes, Your Honor.

14 Q Mr. Hymowitz did not invite you to attend any meetings at
15 which important decisions about the property were decided, is
16 that correct?

17 A That's correct.

18 Q The building was sold, correct, recently?

19 A Correct.

20 Q And do you know who it was sold to?

21 A A not-for-profit named Paul J. Cooper.

22 Q And is there a person whose office who is related to Paul
23 J. Cooper, the chief financial officer, does he operate out of
24 an office at 510 Gates Avenue currently?

25 A Yes, he does.

Sicignano - cross - Sercarz

2091

1 Q You've seen him there personally yourself, correct?

2 A Yes.

3 Q What is Mr. Guerrero's role with regard to the prior
4 tenant, the one that failed to pay the \$2 million in property
5 taxes?

6 A Mr. Guerrero was the CFO of the former tenant and when I
7 objected that we do another deal with someone who they, who I
8 was told by Mr. Hymowitz failed to pay the taxes, I -- my
9 reply to Mr. Hymowitz, he said it would be okay, I said you
10 brought a fox into our /HEPB house.

11 Q Now, I want to ask you another question. So Mr. Guerrero
12 was related to the nonprofit that didn't pay the \$2 million in
13 taxes, correct?

14 A Correct. And he was the chief financial officer.

15 MR. SERCARZ: Your Honor, may we approach?

16 THE COURT: Yes.

17 (Continued on next page.)
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Side Bar

2092

1 (The following occurred at side bar.)

2 MR. SERCARZ: I have a right on cross-examination to
3 test the basis for the witness' view of, or opinion of the
4 defendant's character.

5 THE COURT: And you went pretty far in doing that.
6 It took me a while before I figured out where you were going.

7 MR. SERCARZ: Okay. The government has a right to
8 respond in that regard, but does not have a right to draw out
9 all the facts of this case.

10 THE COURT: I think you have opened the door to
11 this. It was very, as I say, it was a long time. They didn't
12 object before I got anything and the bias on the part of this
13 witness in the kind of questions you were asking, so I think
14 the government is okay. But I'd like it to end soon. We
15 don't need the trial to end on essentially collateral
16 material.

17 MR. CAPOZZOLO: I only have a little bit more.

18 THE COURT: Good.

19 (Side bar ends.)

20 MR. CAPOZZOLO: May I proceed, Your Honor?

21 THE COURT: Yes.

22 (Continued on next page.)
23
24
25

Sicignano - redirect - Capozzolo

2093

1 BY MR. CAPOZZOLO:

2 Q I just want to focus your attention on particular things.
3 Please excuse my leading.

4 A Okay.

5 Q With regard to Mr. Hymowitz, was he aware that
6 Mr. Guerrero was involved with both Miracle Makers and Paul J.
7 Cooper, the current tenant of 510 Gates?

8 A Yes.

9 Q Did you make Mr. Hymowitz aware of why Mr. Guerrero was
10 no longer associated with Miracle Makers?

11 A I showed him an article that appeared in the New York
12 Times.

13 Q And in that article, is it correct that it disclosed that
14 Mr. Guerrero had been --

15 MR. SERCARZ: Objection. This is hearsay.

16 THE COURT: Sustained, yes.

17 Q What was the information in the article that you
18 communicated to Mr. Hymowitz about Mr. Guerrero's fitness to
19 manage money?

20 A He had -- he was a questionable character.

21 Q Was he still employed by Miracle Makers or was he fired?

22 A He was fired.

23 Q The current tenant that bought the building, were they
24 required to put even a down payment down?

25 A No, Mr. Hymowitz did not obtain a down payment.

Sicignano - redirect - Capozzolo

2094

1 Q And the buyer that you brought, the buyer that you
2 brought to the, to potentially buy the property, would they
3 have been able to, were they going to get a bank loan or were
4 they going to get private financing to pay for the property?

5 A I brought the Commissioner of Housing at the time to tour
6 the building and he wanted to make an offer of \$100 a square
7 foot which was \$3.3 million at the time.

8 Q So the City was going to buy the property?

9 A Yes. Yes.

10 Q And if the City had brought the property, would you have
11 gotten paid your interest in the property?

12 A Correct.

13 Q The sale that took place with Mr. Guerrero, have you
14 received any proceeds of that sale?

15 A Yes, I have.

16 Q What's the amount of the proceeds?

17 A Oh, it's a mortgage. We, 510 Gates Avenue Corporation
18 holds a mortgage.

19 Q And there was no down payment on that mortgage?

20 A There was no down payment.

21 Q So the only thing you're receiving now --

22 A Are mortgage payments when the tenant feels like paying
23 the mortgage.

24 Q And that's my next question. Has the tenant made
25 consistent mortgage payments?

Sicignano - redirect - Capozzolo

2095

1 A No, they have not.

2 Q And this, again, is -- and that to your knowledge is
3 being managed by Mr. Guerrero, correct?

4 A Yes, he's the chief financial officer.

5 Q Mr. Sercarz questions about why you were upset with
6 Mr. Hymowitz in dealing with your father, I think that you,
7 that there was something more you wanted to say about what
8 your understanding was of what Mr. Hymowitz did with regard to
9 your father and regard to the ownership shares as they turned
10 out many, many years ago.

11 A From what I understand, the original ownership is
12 supposed to be -- can I say Mr. Freeman's name?

13 Q No, just explain.

14 A Okay.

15 THE WITNESS: I'm sorry, Your Honor.

16 (Continued on next page.)

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Sicignano - recross - Sercarz

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1 (CONTINUING)

2 Q No, just explain, what was Mr. Hymowitz share going to be
3 and what was your father's share going to be?

4 A Equal shares; a third, a third and a third.

5 Q And did it end up that way?

6 A No, it did not.

7 Q What was your father's percentage, just your father's
8 percentage that came up later?

9 A For Gates Avenue, 22 percent.

10 Q And again, your father wasn't a lawyer; right?

11 A My father has a high school equivalency diploma, he's a
12 retired court officer and a veteran of World War II.

13 MR. CAPOZZOLO: No other questions.

14 RECROSS EXAMINATION

15 BY MR. SERCARZ:

16 MR. SERCARZ: Just a couple.

17 Q You have brought a lawsuit; am I correct?

18 A That is correct.

19 Q All right. And you are seeking to vindicate your rights
20 an obtain money for what you feel is his behavior?

21 A I am seeking to liquidate the asset which is the property
22 510 Gates Avenue to bust the corporation so we're no longer in
23 business together.

24 Q And what is it that you want to derive from that lawsuit?

25 A I want to derive some money and also, not to be in

Sicignano - recross - Sercarz

2097

1 business with these people.

2 MR. SERCARZ: Thank you very much, no further
3 questions.

4 THE COURT: Anything else?

5 MR. CAPOZZOLO: No.

6 THE COURT: Thank you, you may step down.

7 THE WITNESS: Thank you, Your Honor.

8 (Witness excused.)

9 MS. POSA: Your Honor, is it all right if we call
10 Special Agent Richards as our last witness? I think it's
11 going to be very quick if the jury can bear with us.

12 THE COURT: How is the jury holding up?

13 THE JURY: All right.

14 THE COURT: All right, good.

15 MS. POSA: The Government calls Special Agent
16 Naushan Richards.

17 (Witness resumes stand.)

18

19 (Continued on following page.)

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S.A. Richards - direct - Posa

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1 S. A. N A U S H A N R I C H A R D S ,

2 called as a witness, having been previously duly

3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. POSA:

6 Q Good afternoon, Agent Richards.

7 A Good afternoon.

8 Q I'm sorry, Special Agent Richards.

9 Let me take you back to the night of Mr. Stevenson
10 Dunn's arrest on October 5th, 2011.

11 A Yes.

12 Q Now, you testified about that previously; correct?

13 A Yes, I have.

14 Q About what time was he arrested?

15 A A little after 8:00 o'clock.

16 Q And that was outside Junior's Restaurant in Brooklyn?

17 A 8:00 o'clock in the evening.

18 Q I'm sorry?

19 A Outside of Junior's Restaurant, yes.

20 Q How many arrests would you say you've made in your career
21 as an FBI agent, by the way?

22 MR. EVANS: Objection.

23 THE COURT: Overruled.

24 A Over a hundred?

25 Q What did you observe Mr. Dunn's physical condition to be

S.A. Richards - direct - Posa

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1 when he was arrested?

2 A He was in good physical condition. He was fine.

3 Q Did you ask him any questions about medication when he
4 was arrested?

5 A Yes, I did.

6 Q What did you ask him?

7 A I asked him if he took any medication on a daily basis,
8 on a routine basis that he needed.

9 Q And what was your purpose in asking him this?

10 A When we make arrests, it's a routine question for us to
11 ask because when we turn over custody to the marshals or to
12 the Bureau of Prisons, one of the things they ask because if
13 we don't have the medication that they need for a 24-hour
14 period, they won't accept custody and therefore, that would
15 force us to either stay with them or somehow get them into a
16 hospital bed if needed overnight. So, it's a routine question
17 that we ask because we won't be able to remand the body if we
18 don't have one day's worth of medication.

19 Q And what did he say when you asked him if he needed
20 medication?

21 A He told me that he has medication, he's a diabetic and he
22 had medication in the box or in the vehicle.

23 Q And did you look for it?

24 A I had agents that were assisting on the arrest look in
25 the vehicle, yes.

S.A. Richards - direct - Posa

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1 Q Were they able to find it right there at the spot at
2 Junior's?

3 A No, they were not.

4 Q Did you then transport Mr. Dunn back to 26 Federal Plaza?

5 A Yes, I did.

6 Q Now, without saying what you may have talked about in the
7 car, how was his demeanor on that ride?

8 MR. EVANS: Objection.

9 THE COURT: Overruled.

10 A He was talkative, he was inquisitive, he wanted to know
11 what was going on, why he was in the car.

12 MS. POSA: I'm going to, just to refresh your
13 recollection, read his testimony from transcript page 1660.

14 I had just returned from a trip in Florida. Because
15 of rushing to the airport I did not medicate myself in the
16 morning so I decided when I would meet Mr. Armstrong in the
17 afternoon, as I always did when I met him, I would go into the
18 bathroom in Junior's, inject myself and then we would have a
19 bite to eat.

20 Q Did Mr. Dunn complain of being hungry in the car ride?

21 A No, he did not.

22 Q Did he say that he needed his insulin injection?

23 A No.

24 Q Did he have any insulin pens on his person when he was
25 arrested?

S.A. Richards - direct - Posa

2101

1 A No.

2 Q Eventually, you got to 26 Federal Plaza; right?

3 A Yes.

4 Q Did there come a time when he was interviewed?

5 A Yes.

6 Q And approximately what time was that?

7 A 8:45.

8 Q Who all was in the room when Mr. Dunn was being
9 interviewed?

10 A Myself and Special Agent Joe de la Pena of the Department
11 of Labor at that time.

12 Q And can you tell us about your conversation you had
13 during that interview?

14 A Well, the very first thing that we discussed was his
15 Advice of Rights. I took the form, the written Advice of
16 Rights form.

17 Q Government's Exhibit 624?

18 A Yes. I read the form to him. I put the time that I read
19 it and started the Advice of Rights, then I turned it over to
20 him for him to review it.

21 And during the time that he was reviewing it, he
22 asked me if he could talk to Lee Hymowitz, to which I replied,
23 no, you can't talk to Lee because he's going to be arrested
24 tomorrow.

25 And then he said to me how about Mike Freeman. And

S.A. Richards - direct - Posa

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1 I said no, you'll see him tomorrow, also.

2 And then at that point he gobbled up the form, he
3 grabbed it closer to him. He said something to the effect Oh,
4 I see where this is going --

5 MR. EVANS: Objection.

6 THE COURT: Overruled.

7 A I see where this is going, the black guy's not going to
8 take the fall for those two Jewish attorneys or I'm not going
9 to take the fall for those two Jewish attorneys while he was
10 signing the form and then handed the form back to us and we
11 proceeded to go forward with the interview.

12 Q Now, I believe he had testified, transcript page 1661,
13 that he was already one hour into the interview before he
14 actually signed that Advice of Rights.

15 Do you recall him testifying to that effect?

16 A Yes, I do.

17 Q Is that accurate?

18 A No, it was not.

19 Q After he signed it, did he proceed to make the statement
20 that you had read earlier?

21 A Yes.

22 Q I'm not going to ask you to repeat all of it but there
23 are two additional statements that you can now testify about.

24 MS. POSA: Your Honor, the Government moves to admit
25 the entire Exhibit of Mr. Dunn's post-arrest statement as

S.A. Richards - direct - Posa

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1 Government's Exhibit 903.

2 THE COURT: Counsel, I think let's discuss whether
3 the actual Exhibit is going to be admitted after we excuse the
4 jury, unless there is no objection to it.

5 MR. SERCARZ: There is. I think we should talk
6 about it.

7 THE COURT: Yes, I think we need to talk about it.
8 So, ask the questions you need to ask.

9 MS. POSA: Can I just elicit the two statements that
10 we had discussed prior.

11 THE COURT: Yes.

12 MS. POSA: All right. May I just show this to the
13 witness?

14 THE COURTROOM DEPUTY: Yes.

15 Q I'm sorry, can you see it Special Agent Richards?

16 A Yes.

17 Q Would you please start reading on the first paragraph the
18 sentence beginning during this time to the end of that
19 paragraph, if you can see it?

20 A Okay.

21 During this time period of the kickback payments
22 Dunn, along with partners Lee Hymowitz, Esq. and Michael
23 Freeman, Esq. were the Hancock developers and Armstrong was a
24 contractor/developer under his company name Metropolis
25 Development Corporation. Dunn, Hymowitz and Freeman operated

S.A. Richards - direct - Posa

2104

1 SML Development, which was the entity they used to develop the
2 Hancock project.

3 Q Okay. I'm going to turn your attention to page three.

4 Would you please start reading from where I am
5 pointing, where it says it was Dunn and then to the end of
6 that paragraph.

7 A Yes.

8 It was Dunn, Hymowitz and Freeman who had
9 collectively negotiated a \$300,000 kickback payment from
10 Starzecki in connection with this project. Starzecki has yet
11 to pay the remaining kickback balance of approximately \$75,000
12 to Dunn, Hymowitz and Freeman. Dunn said that he had to put
13 approximately 20,000 of the \$75,000 kickback payment from
14 Starzecki into the actual security budget of the HPD
15 neighborhood project.

16 Q Now again, I am going ask you about his demeanor during
17 this interview. What was it like?

18 A His demeanor was fine.

19 MR. EVANS: Objection.

20 THE COURT: Overruled.

21 A Very much like it was when he was testifying except for
22 the fact that he was more animated in explaining his position
23 to me.

24 Q Did he appear to be, to use his term, befogged?

25 A No.

S.A. Richards - direct - Posa

2105

1 Q And what makes you say that?

2 A He was giving me detailed statements that were very
3 similar and in congruence with what I had known to be --

4 THE COURT: Agent Richards, I don't want to know
5 about your investigation.

6 THE WITNESS: Okay.

7 A His, he was detailed, he was consistent and coherent.

8 Q Was he sweating profusely?

9 A No.

10 Q Was he complaining of exhaustion?

11 A No.

12 Q Did he appear to be confused?

13 A Absolutely not.

14 Q Did you ever offer him any food or drink during this
15 interview?

16 A Yes, I offered it in the beginning. I recall that I said
17 there's a Dunkin' Donuts across the street, can I get you, you
18 know, water, a sandwich or a bagel, something from
19 Dunkin' Donuts, coffee, anything. He said no. And I believe
20 a couple times during the interview I asked if he needed
21 anything.

22 Q At any point during that interview, did he ask for his
23 medication for his diabetes?

24 A No, he did not.

25 Q At any point in time did he express any sentiments about

S.A. Richards - direct - Posa

2106

1 being in physical distress or not feeling well?

2 A No.

3 Q Did there come a time when you tried to wrap up this
4 interview?

5 A Yes, there were several times during that interview that
6 I was trying to end it because we had a busy day set up, you
7 know, the next morning and I would try to get up from the
8 table and leave and he repeatedly, at least half a dozen times
9 said to me, you know, on different occasions, Officer Shaun
10 please, sit down, I'm not done talking.

11 Q And do you recall that he also referred to you as Officer
12 Shaun during his testimony?

13 A Yes.

14 Q Are you an officer?

15 A No.

16 Q It's unusual for people to call you that; right?

17 A Yes.

18 Q Was the interview eventually concluded?

19 A Yes, it was.

20 Q And do you know what happened next with Mr. Dunn?

21 A Yes, he completed his arrest processing where they
22 fingerprinted him -- and when I say they, the members of my
23 team that were in custody of him and were responsible for
24 taking him to the MDC to lodge him overnight.

25 So, they finished the fingerprinting, they finished

S.A. Richards - direct - Posa

2107

1 the photographing and any of the arrest package paperwork
2 that's needed to remand somebody to the marshals or to the
3 Bureau of Prisons.

4 Q Are you aware of whether or not he was fed before he went
5 in to the -- by MDC you're talking about Metropolitan
6 Detention Center?

7 A Yes, that's correct.

8 Q That is the Federal detention center here in Brooklyn?

9 A Yes.

10 Q Was he fed before he went in to custody at the MDC?

11 A Yes, I was told and I did instruct the team members that
12 took him to the MDC to go down to his vehicle and with his
13 help and assistance, find his medication. And I was told by
14 those agents that they did find the medication and that there
15 was, I believe, Chinese food in the car and they gave him the
16 Chinese food, he ate it and then they transported him to the
17 MDC for lodging.

18 Q And was he, in fact, lodged overnight at the MDC or did
19 they turn him away and make him go to the hospital because he
20 was in a diabetic episode?

21 MR. EVANS: Objection to form.

22 THE COURT: Sustained.

23 Q What happened when he got to the MDC?

24 A He was remanded to the Bureau of Prisons, their custody
25 and lodged overnight.

Proceedings

2108

1 MS. POSA: No further questions.

2 MR. SERCARZ: Can we approach?

3 THE COURT: Yes.

4 (Side-bar conference held on the record out of the
5 hearing of the jury.)

6

7 (Side-bar.)

8 MR. SERCARZ: Your Honor I request that you give the
9 instruction again that you gave when Agent Richards first
10 testified to the effect that the statements that he made
11 regarding this post-arrest interview are admissible against
12 Dunn alone and cannot be considered as to Hymowitz and
13 Freeman.

14 MS. POSA: No objection.

15 THE COURT: Just brief like that, not the whole long
16 statement.

17 MR. SERCARZ: That will do.

18 THE COURT: Okay.

19 Anything else?

20 MR. EVANS: No.

21 THE COURT: Okay.

22 (Side-bar end.)

23

24 (In open court.)

25 THE COURT: Members of the Jury, I just want to

S.A. Richards - cross - Evans

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1 remind you of the instruction I gave you earlier; that any
2 statements that you find that Mr. Dunn made prior or after his
3 arrest that been have just been testified to by the agent can
4 be used only against Mr. Dunn and you may not use any
5 statements against defendants Hymowitz or Freeman.

6 Mr. Evans.

7 CROSS EXAMINATION

8 BY MR. EVANS:

9 Q Agent Richards, you arranged the time, date and location
10 of Mr. Dunn's arrest; isn't that correct?

11 A Through a cooperating witness, yes.

12 Q So, you wrote the script that George Armstrong used to
13 arrange this meeting, yes?

14 A Yes.

15 Q You decided the location, yes?

16 A That's correct.

17 Q You outlined the conversation for Mr. Armstrong; yes?

18 A There wasn't much conversation, but yes, I told him we
19 needed to have a meeting, he needs to have Stevenson Dunn show
20 up for another payment.

21 Q And you instructed Mr. Armstrong to mislead Mr. Dunn a
22 month before to set this up, yes?

23 MS. POSA: Objection, Your Honor, scope.

24 THE COURT: Overruled.

25 A I don't know that it was a month, but yes, a week or two,

S.A. Richards - cross - Evans

2110

1 maybe a month.

2 Q The last phone call was September 27th to arrange this;
3 correct?

4 A I believe so.

5 Q You listened to the conversation that Mr. Armstrong had
6 with Mr. Dunn; didn't you?

7 A Yes.

8 Q You tape-recorded it; didn't you?

9 A Yes.

10 Q And was Mr. Armstrong working on your instructions when
11 he led Mr. Dunn to believe that there would be contact early
12 in the morning of October 5th to arrange the time, date and
13 location?

14 A I never had him contact him or make him set a meeting for
15 the morning. The plan was always in the evening.

16 Q You heard Mr. Dunn testify that he missed his morning
17 dosage on the morning of his arrest; yes?

18 A Yes.

19 Q Did you believe that testimony?

20 A No.

21 Q And what basis did you have for unbelieving that
22 testimony?

23 A Mr. Dunn drove the vehicle to the meeting. If he missed
24 his dosage, in all likelihood he couldn't drive his car.

25 Q And based on what information do you make that conclusion

S.A. Richards - cross - Evans

2111

1 on, Agent?

2 A I watched Mr. Dunn park his vehicle, parallel park which
3 is not easy. I watched him get out of his vehicle, get into
4 the cooperator's vehicle and I spent 45 minutes in an
5 interview with Mr. Dunn.

6 Q Is that medical information?

7 A It's an observation.

8 Q I asked you if you had any medical information on which
9 to base your conclusion?

10 A I had information from him.

11 MR. EVANS: I'm going to ask that the Court strike
12 the witness's answer and ask the witness to answer my
13 question.

14 THE COURT: Please, answer the question that is put
15 to you.

16 A Medical from a doctor? No.

17 Q Are you trained as an emergency medical technician?

18 A No, I am not.

19 Q Are you trained as a paramedic?

20 A No.

21 Q Do you know what kind of diabetes Mr. Dunn has?

22 A No.

23 Q Do you know anything about the efficacy of insulin pens
24 and medication for diabetics?

25 A No.

S.A. Richards - cross - Evans

2112

1 Q You don't have any medical information at all on which to
2 base that conclusion; do you?

3 A No.

4 Q And when you testified that you had agents search his
5 vehicle, you testified previously about that; didn't you?

6 A Yes.

7 Q And when you testified previously, you took an oath,
8 right?

9 A Yes.

10 Q You swore to tell the truth; right?

11 A Yes.

12 Q You prepared for that testimony; correct?

13 A Yes.

14 Q And you said in that testimony that you were going to
15 search the vehicle for safety; is that correct?

16 A That's correct.

17 Q If he was out of the vehicle and you were away from the
18 vehicle, whose safety were searching for, sir?

19 A Everybody that was there on the scene.

20 Q Everybody who?

21 A Agents.

22 Q Okay.

23 A Subject's investigation, people that were going to get
24 into that car and transport it back to 26 Federal Plaza. It's
25 a common practice to do a protective sweep before we step into

S.A. Richards - cross - Evans

2113

1 any area we don't control.

2 Q Was he making furtive actions?

3 A No, he did not.

4 Q Was he acting suspiciously?

5 A No.

6 Q Had you watched him put anything dangerous in his
7 vehicle?

8 A No.

9 Q But he happened to say that something might be in his
10 glove compartment?

11 A He indicated that his medicine case hi was in the glove
12 compartment.

13 Q What kind of medication were you looking for, Agent?

14 A I was looking for pills.

15 Q You were looking for pills. Did he tell you to look for
16 pills?

17 A I believe so.

18 Q You believe so?

19 A Yes.

20 Q You said you offered him food and water when you first
21 arrived; is that correct?

22 A When I sat down in the interview room, yes.

23 Q Did you sit down when you first arrived at the interview
24 room?

25 A No.

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1 Q So, it wasn't when you first got to the interview room
2 then; was it?

3 A It was when I first got to the interview room.

4 Q It was when you first got to the interview room?

5 A Yes.

6 Q How long had he been in the interview room before you
7 first got there?

8 A Two or three minutes.

9 Q Who was in charge of him at that time, if you know?

10 A I don't remember which agent.

11 Q And you testified that you personally transported
12 Mr. Dunn from the scene of his arrest outside of Junior's to
13 26 Federal Plaza; is that correct?

14 A Yes.

15 Q And during the time that he was in your vehicle, was
16 there another agent or agents the vehicle with you?

17 A Yes, Special Agent Ian Thomas.

18 Q And did you or Special Agent Ian Thomas provide Mr. Dunn
19 with his Miranda warnings?

20 A No, we did not.

21 Q Did you question him?

22 A I questioned him.

23 Q But you didn't provide his Miranda warnings in the car?

24 A No.

25 Q Is there a reason you didn't?

Side-Bar

2115

1 A Yeah, because it was not an interrogation, it was a
2 two-way conversation between Mr. Dunn and myself --

3 Q And when you were --

4 A -- he asked me a question --

5 THE COURT: Counsel, I think that we're going
6 beyond.

7 Q When he asked you, when you were having this two-way
8 conversation --

9 THE COURT: Counsel, come to the side and give me a
10 proffer as to where you're going.

11 (Side-bar conference held on the record out of the
12 hearing of the jury.)

13

14 (Side-bar.)

15 THE COURT: The conversation has been suppressed and
16 I don't know where you're going with this.

17 MR. EVANS: He testified in his rebuttal direct that
18 he observed my client's demeanor.

19 He just testified that he was driving the vehicle
20 and there was another agent there.

21 I want to ask how did he observe his demeanor, I
22 want to ask if he was handcuffed, how did he observe his
23 demeanor while you're driving and talking.

24 MS. POSA: What does that have to do with the
25 Miranda waiver?

Side-Bar

2116

1 MR. EVANS: His testimony was that he observed his
2 demeanor in the vehicle, that's what you asked him in the car.

3 THE COURT: So ask him about how he observed his
4 demeanor, but I don't want you going into suppressed
5 conversations.

6 MR. EVANS: I am not going to go into the other
7 statement.

8 THE COURT: Thank you.

9 MR. EVANS: But I wanted to go into the
10 circumstances regarding his observation.

11 THE COURT: Well, I don't want to belabor the whole
12 issue here.

13 MR. EVANS: I didn't want him to re-testify but I
14 want to establish that he's testified about demeanor, he was
15 in no direct position to observe him.

16 THE COURT: So, ask him that.

17 MR. EVANS: I will, but I had to lay the foundation
18 that he was in the car.

19 THE COURT: There is no foundation coming in on the
20 conversation that I suppressed. Period.

21 MR. EVANS: I won't talk about the conversation.

22 THE COURT: Good. Thank you.

23 (Side-bar end.)

24

25 (In open court.)

S.A. Richards - cross - Evans

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1 BY MR. EVANS:

2 Q During the transport of Mr. Dunn from Brooklyn to
3 Manhattan, were you driving the vehicle?

4 A Yes, I was.

5 Q You just testified that you observed my client's
6 demeanor. Was he sitting in the front seat next to you?

7 A No.

8 Q Was he sitting behind you?

9 A He was sitting in the rear seat on the passenger side.

10 Q So, how were you able to observe his demeanor while
11 operating the vehicle?

12 A I could look at him in the rearview mirror.

13 Q Okay. And during the course of your interrogation with
14 my client, was he handcuffed?

15 A He was cuffed at one point to the, there's a table and
16 there's a bar that's relatively level with the table and at
17 one point I know he was cuffed.

18 Q Was he cuffed during the entirety of the interrogation?

19 A Very possible.

20 Q And you heard my client testify that he has diabetes;
21 correct?

22 A Yes.

23 Q Do you have any medical information that you've obtained
24 since his arrest that would contradict what he told you?

25 A No.

S.A. Richards - cross - Evans

2118

1 Q Do you have any reason to believe that he's misleading
2 you when he says he does have diabetes?

3 A No.

4 Q Were you present for the entire arrest, interrogation and
5 processing of Mr. Dunn?

6 A I was present up until the point that the interview was
7 done and then they finished the rest of the processing and
8 transported him to MDC but as far as the arrest, the interview
9 interrogation except for those two or three minutes it took me
10 to take my gear back to my desk area, I was, I was with him or
11 in the vicinity of where he was at all times.

12

13 (Continued on following page.)

14

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VB

OCR

CRR

Richards - cross - Evans

2119

1 EXAMINATION CONTINUES

2 BY MR. EVANS:

3 Q Were you with him after 9:40 that evening?

4 A No, I was not.

5 Q Do you know what time they finished processing him?

6 A I would have to look at my arrest log but I believe it
7 was 11:30, 11:40 maybe, 12:00.

8 Q So it's at least two hours after you left him, correct?

9 A Within that timeframe, yes.

10 Q And when you testified about him going to the vehicle,
11 did you go to the vehicle with him directly?

12 A No, I did not.

13 Q Did someone else do that?

14 A Yes. The agents --

15 Q They reported that to you?

16 A Yes.

17 Q Who reported to you that they went with Mr. Dunn down to
18 the vehicle?

19 A I don't know if I heard directly from Agent Granatstein
20 or if I heard it through Joe Della Penna but I was told that
21 he went to the vehicle and that they were able to get whatever
22 they needed to be able to lodge him for the next -- overnight.
23 Because during the interview --

24 Q I'm sorry.

25 A We -- we had --

GR

OCR

CM

CRR

CSR

Richards - cross - Evans

2120

1 THE COURT: Wait.

2 Do you have the answer to your question?

3 MR. EVANS: Yes.

4 THE COURT: All right. Then move on.

5 Q Isn't it true, Agent, that Mr. Dunn wasn't administered
6 his medication until the following morning?

7 A I don't know.

8 Q Isn't it true, that agents who reported to you reached
9 out to Mr. Dunn's son to help in acquiring his medication?

10 A I was told that.

11 Q Isn't it true that in -- withdrawn.

12 So you don't know for certain that he was provided
13 his medication, is that correct?

14 A I know that I was informed that they found medication in
15 the vehicle and he took a dose before he went to the MDC for
16 lodging.

17 Q Did anybody write that down anywhere?

18 A No.

19 Q Did you personally provide Mr. Dunn any food?

20 A No, I did not.

21 Q So you're only relying on the reports of others?

22 A Yes .

23 Q Did those other people write reports and sign them and
24 turn them in?

25 A They had the arrest log and they filled out the portion

Richards - cross - Evans

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1 that effectively turned him over to the Bureau of Prisons at
2 MDC. So if he wasn't fit for confinement, they wouldn't have
3 been able to fill that out.

4 Q I asked you if you had reports signed by your agents?

5 A That's a report, yes. They initialed when they dropped
6 him off to the MDC and they initialed when they picked him up
7 the next morning, yes.

8 Q Okay. And do I -- withdrawn.

9 Did you write the statement that you read to the
10 jury on the form you called the 302?

11 A No.

12 I was a coauthor on that.

13 Q Who was the other coauthor?

14 A Special Agent Joe Della Penna.

15 Q Did you take notes yourself during this interview?

16 A No; Joe did.

17 Q Who wrote the report?

18 A Joe authored it but I reviewed it and coauthored it. But
19 he physically typed it in.

20 Q He typed it.

21 Did he use your notes?

22 A They were our notes.

23 Q So the statement that you are referring to is really a
24 report, correct?

25 A No.

GR

OCR

CM

CRR

CSR

Richards - cross - Evans

2122

1 Q Did you have Mr. Dunn write out a statement?

2 A No.

3 Mr. Dunn told --

4 Q Thank you. You have answered my question.

5 Did you have Mr. Dunn sign your notes?

6 A No.

7 Q Did you have Mr. Dunn initial your notes?

8 A No.

9 Q Did you videotape this interview?

10 A No.

11 Q Did you audiotape the interview?

12 A No.

13 Q You audio-taped the phone call between George Armstrong
14 and Mr. Dunn, correct?

15 A That's correct.

16 Q But you didn't audiotape this interview?

17 A No.

18 Q How long after this interrogation did you coauthor this
19 report?

20 A I believe it was within 15 days before it was finalized.

21 Q It wasn't the next day?

22 A No.

23 Q When Mr. Dunn asked to speak to Lee Hymowitz, do you
24 recall your testimony about that a moment ago?

25 A Yes.

GR

OCR

CM

CRR

CSR

Richards - cross - Evans

2123

1 Q You knew Lee Hymowitz was an attorney, correct?

2 A Yes, I did.

3 Q And when Mr. Dunn subsequently asked to speak to Mike
4 Freeman, you knew Mike Freeman was an attorney, correct?

5 A Yes.

6 Q Did you stop the interview when he asked to speak to Lee
7 Hymowitz?

8 A No.

9 MS. POSA: Objection, Your Honor.

10 THE COURT: Sustained.

11 Counsel, move to something that is pertinent to this
12 subject matter, please.

13 Q Did you offer Mr. Dunn assistance of assigned counsel?

14 MS. POSA: Objection.

15 THE COURT: Sustained, counsel.

16 Q You have testified that Mr. Dunn was calling you Officer
17 Sean, is that correct?

18 A That's correct.

19 Q How would he know your first name?

20 A I introduced myself to him.

21 Q And it is your testimony that he was calling out for you
22 Officer Sean, Officer Sean, like that?

23 A Officer Sean, please sit down. I'm not done talking.

24 Q Almost childlike?

25 A No.

GR

OCR

CM

CRR

CSR

1 MR. EVANS: Nothing further.

2 Thank you.

3 MS. POSA: Nothing further for this witness.

4 The government rests, again.

5 THE COURT: Thank you.

6 You play step down.

7 (Witness steps down.)

8 THE COURT: All right. Members of the jury, we have
9 just finished the government's rebuttal case. That means that
10 the evidentiary portion of this trial is complete. Let me
11 tell you what our schedule is going forward.

12 Tomorrow we will hear the closing arguments of the
13 attorneys. The way that works is that because the government
14 has the burden of proof, they will go first and then we will
15 hear from each of the defense attorneys, and then the
16 government will have a short opportunity for rebuttal.

17 Then, when that is concluded, and that may not
18 be -- well, we hope that we will be able to conclude all of
19 that tomorrow, but if not, we will conclude that on Monday
20 morning and at that point I will instruct you on the law that
21 you are to apply in this case and then you will begin your
22 deliberations. That is our schedule.

23 Please keep in mind -- as I say, I hope you will be
24 deliberating by Monday lunchtime. Keep in mind that if you
25 are deliberating, you will not be permitted to leave the

1 courthouse over the lunch period. We will ask you to keep
2 deliberating over lunch, just to speed things along, and we
3 will provide lunch to you. Victor will come in and provide
4 the menu or however -- it's already done?

5 THE CLERK: Yes.

6 THE COURT: You have taken care of it.

7 You will have a fine lunch, I hope, and you will be
8 able to proceed expeditiously.

9 All right. So that's the schedule. I just wanted
10 you to be aware of that.

11 All right. With that, I will excuse you now for
12 once again a long weekend -- oh, no. You are coming back. I
13 forgot about tomorrow, you see. Well, you can see where my
14 heart is. I have to be here tomorrow too. Okay. It has been
15 a long day.

16 We will see you tomorrow morning for the closing
17 arguments of counsel. We will start promptly, I hope, at
18 10:00 o'clock.

19 Thank you. Good night.

20 Remember not to discuss the case at this point, not
21 until I send you out for your deliberations.

22 (The following occurred in the absence of the jury.)

23 THE COURT: All right. Counsel, have a seat. I
24 just want to talk to you about a couple of things.

25 I believe we have concluded all of our issues

1 regarding the charge.

2 Let me just ask one question of the government. It
3 relates to the aiding and abetting charges.

4 With respect to three of the things that at the
5 moment are in the charge, state law bribery, federal bribery,
6 and extortion, I am asking whether or not it is really
7 appropriate to charge aiding and abetting. To have aiding and
8 abetting there has to be somebody else who did the crime and
9 then you say that the defendant on trial aided and abetted
10 that person. I am not clear how you could have that with
11 respect to those three crimes. I understand the other crimes
12 charged.

13 MS. POSA: That's correct, Your Honor. That's fine.

14 THE COURT: That's fine, meaning we should take
15 those three out?

16 MS. POSA: Yes.

17 THE COURT: Okay. I will ask my clerk to take care
18 of that.

19 MR. EVANS: Your Honor, what page is that?

20 THE COURT: Let's see. What page is that? Can
21 anybody help me?

22 THE LAW CLERK: 64.

23 THE COURT: All right. Page 64 of the draft that
24 you have.

25 I should tell you, the pagination and all will

1 change and, of course, there may be cosmetic changes to what
2 you have. We are also adding the charge that was requested.

3 Okay. So we have to -- Count Eleven was extortion.
4 So we will take that out.

5 Federal bribery? Count Ten is the federal bribery,
6 I believe.

7 Counsel, please confirm this for me.

8 MS. POSA: Yes. One second, Your Honor. I am just
9 checking.

10 THE COURT: The state law bribery is a racketeering
11 act. Then I can take out on page 77 the entire paragraph
12 regarding aiding and abetting under New York State law.
13 Correct?

14 MS. POSA: Yes, Your Honor. I just want to check
15 the counts.

16 THE COURT: Okay.

17 MS. POSA: I think Count Twelve is extortion.

18 THE COURT: We don't have a Count Twelve.

19 MS. POSA: All right.

20 THE COURT: That I know of.

21 MS. POSA: I'm sorry.

22 THE COURT: Also in the indictment, page 75 on the
23 state law bribery, I am going to take out the reference to
24 section 20, which is the aiding and abetting section.

25 MS. POSA: Fine with the government.

1 THE COURT: I didn't hear you.

2 MS. POSA: That's fine with us.

3 THE COURT: All right. Mr. Evans?

4 MR. EVANS: That's perfectly okay.

5 THE COURT: Okay. So we are taking those sections
6 out.

7 Okay. Then we had the character witnesses. It is
8 just one defendant, right, who has character witness?

9 MS. POSA: That is correct.

10 THE COURT: So we will say instead of some, we will
11 say one of the defendants has called witnesses who gave their
12 opinions, et cetera.

13 I don't know that we need to refer to the
14 government's character witness on this.

15 MS. POSA: Can you tell us what page that is?

16 THE COURT: Page 83 of the draft.

17 MR. SERCARZ: Your Honor, I would like some
18 language, given that the government called a rebuttal
19 character witness, to the effect that just as a defense
20 character witness can't be considered for an opinion as to
21 whether the defendant is not guilty, rebuttal witness can't be
22 considered -- her testimony cannot be considered an opinion as
23 to the defendant's guilt.

24 THE COURT: Right. Maybe we can do this a little
25 quicker. What if we do it this way? One of the defendants

1 has called witnesses who have given their opinions of his
2 character. The government has also called such a witness.
3 The testimony of character witnesses, and then we can just go
4 on with the rest of it.

5 MR. SERCARZ: In other words, the term character
6 witnesses is not to be taken by you as the witness' opinion,
7 et cetera?

8 THE COURT: Right. As to whether the defendant is
9 guilty or not guilty.

10 MR. EVANS: Your Honor, should we add a sentence to
11 say that it is not required to call the character witness and
12 it is not a deficit of Mr. Freeman or Mr. Dunn that they
13 didn't?

14 MS. POSA: I think that's covered by the burden of
15 proof which says that the defense doesn't have any obligation
16 to call anybody ever.

17 THE COURT: I don't know that we would want to
18 single out character witnesses. They are also not required to
19 call any other kind of witnesses. I think it is fine the way
20 it is.

21 Does anybody else want to be heard on that?
22 Anything else regarding the charge?

23 MR. EVANS: The Court will add an index when it is
24 completed, I think you said?

25 THE COURT: Yes. It is a little bit of a computer

1 difficulty. We are trying to get it done. I think we have it
2 now. My clerks are smiling.

3 MS. POSA: Do you think -- would it be possible to
4 get an electronic copy of it?

5 THE COURT: When it is done?

6 MS. POSA: Yes.

7 THE COURT: I don't know when it is going -- you
8 mean tonight?

9 MS. POSA: No.

10 THE COURT: I haven't --

11 MS. POSA: Not tonight.

12 THE COURT: You mean eventually?

13 MS. POSA: Yes. It just makes it a little easier,
14 more searchable that way.

15 THE COURT: We can do that.

16 MS. POSA: Thank you.

17 MR. EVANS: Your Honor, did the defense counsel
18 answer your query from the first thing this morning about the
19 cooperating agreements?

20 THE COURT: No.

21 MR. EVANS: I reviewed the two. The one for
22 Mr. Starzecki, which I entered as Dunn Exhibit H --

23 THE COURT: Let me just find the page.

24 Okay. Page 85. The way I have it reading now, the
25 government agreed not to pursue other charges.

1 MR. EVANS: As to Mr. Starzecki, I reviewed that
2 over the lunch hour and it only says that he would get
3 substantial assistance and they wouldn't recommend a specific
4 sentence. There is no promise, and he consents to forfeiture.

5 THE COURT: Right. It does say the government
6 agrees not to pursue other charges.

7 MR. EVANS: Right.

8 THE COURT: Does everybody agree with that?

9 MS. POSA: I mean, for the crimes specified in the
10 coverage paragraph. I don't want to make it too complicated.

11 THE COURT: I understand. But the point, there is
12 no reduction of charges.

13 MS. POSA: Right.

14 THE COURT: Okay. Unless I hear something from
15 somebody, I am taking that as consent.

16 MR. EVANS: As to Mr. Walters, his agreement
17 specifically in paragraph two calls for a two-level reduction.

18 THE COURT: That's a guidelines.

19 MR. EVANS: Okay. And the government excused six or
20 eight charges.

21 THE COURT: When you say excused, you are talking
22 about agreed not to pursue other charges, correct?

23 MR. EVANS: Yes.

24 THE COURT: Okay.

25 MR. EVANS: Or did they remove charges,

1 Mr. Capozzolo, that he had already been indicted for?

2 THE COURT: I don't think so.

3 MS. POSA: He pled guilty to Count One, which was
4 racketeering, and in that count all those racketeering acts
5 covered the substantive charges and then --

6 THE COURT: Maybe they did reduce charges then.

7 MR. EVANS: Because I believe they excused the
8 extortion, the bribery, the money laundering and the money
9 laundering conspiracy, the wire fraud and the wire fraud
10 conspiracy.

11 MS. POSA: He wasn't charged with extortion and it's
12 very difficult because he was charged with all of those things
13 within the RICO conspiracy.

14 THE COURT: I know. His exposure still is limited
15 to whatever the RICO statute is. There is not an addition.

16 So I should say -- why don't I just leave it in? To
17 reduced charges and/or, and if the jury really wants to know,
18 they can look at the agreement. They are in evidence. Okay?

19 MS. POSA: That sounds right.

20 THE COURT: Any objection to that?

21 MR. DiCHIARA: Judge, is that on behalf of Starzecki
22 and Walters?

23 THE COURT: Use the microphone.

24 MR. DiCHIARA: Is that on behalf of both
25 cooperators, Starzecki and Walters?

1 THE COURT: Yes.

2 MR. DiCHIARA: Okay.

3 THE COURT: Okay. Anything else on the charge?

4 MR. EVANS: Nothing from me, Your Honor.

5 MS. POSA: Not from the government, Your Honor.

6 MR. SERCARZ: No.

7 THE COURT: Then I have a couple of questions that I
8 want to go over with you.

9 We have to check the defendants testifying. Let's
10 just make sure we get that right.

11 On page seven, okay, we do have one defendant who
12 did not testify. So I will leave in the sentence at the top
13 of the page that you may not attach any significance to the
14 fact that defendant did not testify.

15 Okay?

16 Let me find the witness testimony section. That is
17 page 79 and that will read, in a criminal case, the defendant
18 cannot be required to testify but in this case defendant Dunn
19 and the defendant Hymowitz have chosen to do so. You are to
20 evaluate their testimony in the same manner that you evaluate
21 the testimony of the other witnesses.

22 MR. SERCARZ: Your Honor, would the Court insert
23 language in connection with those two defendants who did
24 testify that the fact that they testified does not shift the
25 burden of proof?

1 THE COURT: Does anybody else want to be heard on
2 that?

3 MS. POSA: We don't object. It's already pretty
4 clear I think at the beginning where it says the burden never
5 shifts.

6 THE COURT: Let's see if we can put it --

7 MS. POSA: Page six of our version.

8 THE COURT: I think there might be a better way to
9 do it.

10 (Continued on next page.)
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1 THE COURT: Okay. On page six where we have the
2 burden of proof, that says: Throughout this trial, the burden
3 never shifts. The defendants do not have to prove their
4 innocence. Indeed, they need not submit any evidence at all.
5 This principle applies even where they do offer evidence on
6 their own behalf, or something like that.

7 MR. SERCARZ: Thank you, Your Honor.

8 MS. POSA: That sounds good.

9 THE COURT: Okay.

10 Okay. So if there is nothing else on the charge, I
11 have a couple of questions that I want to address with you
12 regarding summations and I want to ask you to inform me so we
13 do not have any problems tomorrow about anything that you may
14 think may be close to the line. I really hate to have an
15 objection in the middle of the summation so if there is
16 anything that you have any doubts about, I want you to let me
17 know.

18 So first, we will start with the things that I
19 recall that came up during the trial that have to be
20 addressed.

21 I think we are clear on this, but this has to do
22 with something that came up during the testimony of
23 Mr. Starzecki about Habitat for Humanity and whether he was
24 able to use his contacts at charitable functions to get
25 business.

1 I believe I ruled at that time, transcript page 679
2 and 702, that the government, of course, can argue that the
3 mere fact that you are charitable does not mean you are
4 innocent and that from the evidence, if the charitable
5 activities may also have been useful professionally, but that
6 the government is not permitted to argue that because
7 Mr. Starzecki had certain intent with respect to his
8 charitable activities, that that somehow means that
9 Mr. Hymowitz had the same intent with respect to his.

10 MS. POSA: We agree.

11 THE COURT: Okay. And then the government in their
12 letter of March 17th asks that, on page five, that the
13 defendants be precluded from arguing about the propriety of
14 the retainer agreement and their billing practices in
15 summation.

16 Now, as things have turned out, the issues regarding
17 the agreement are somewhat different than we perhaps thought
18 they would be initially so let's just talk about whether there
19 is anything else, what it is exactly, if the government still
20 wants to try to limit the defense, what exactly you want to
21 limit them to and let's hear about that.

22 MS. POSA: I think maybe we would have to -- if we
23 can get a proffer from the defense about what they intend to
24 argue about it.

25 THE COURT: That may make sense.

1 Do you have the letter, Mr. Sercarz?

2 MR. SERCARZ: The retainer letter itself?

3 THE COURT: No. No. The letter from the
4 government. The March 17th letter from the government
5 addressed largely issues about character testimony, but at the
6 very end of the letter, it addressed the issue of asking me to
7 preclude the defense from making certain arguments regarding
8 the retainer agreement given that I had not let them put in
9 the disciplinary rules.

10 MS. POSA: I think now, Your Honor, it's probably
11 moot because all the stuff about the retainer agreement and
12 professional rules, well, I guess at least concerning billing
13 records, now that's all out in the open and that's in
14 evidence.

15 THE COURT: Right, but I just want to make sure that
16 there is nothing that is going to be said by the defense that
17 you are going to object to and let's let it all hang out here.

18 MR. SERCARZ: I don't, I don't intend to argue that
19 the retainer agreement was in an appropriate form, that it
20 passed muster under the disciplinary rules.

21 THE COURT: Right. You are just going to argue it
22 is a draft or that Mr. Hymowitz -- well, you are going to
23 argue from his testimony.

24 MR. SERCARZ: I think the use that I will make of
25 the retainer agreement is that it evinces his intent to seek

1 bids on private jobs on behalf of the client rather than to
2 cover up a kickback payment.

3 If I had to put it in one sentence as to what I'm
4 going to say about the agreement, I'm not here to support the
5 notion that that agreement passes muster under the
6 disciplinary rules. To the extent that the government is
7 seeking to use this as evidence that it was a sham retainer
8 agreement to disguise a kickback payment, I intend vigorously
9 to dispute that. Does that help?

10 THE COURT: What about the billing, about keeping
11 records?

12 MR. SERCARZ: In that regard --

13 THE COURT: I mean, the government, the argument in
14 the letter is that you should be precluded from arguing that
15 the explanations by the defense are consistent with the way
16 other lawyers operate and I am assuming you are not going to
17 argue that. Is that a fair assumption?

18 MR. SERCARZ: I will confine my arguments to the
19 defendant's own billing practices as he did when he testified.

20 THE COURT: Okay.

21 MR. SERCARZ: But just to make sure I'm not in the
22 proverbial doghouse which only I seem to inhabit, I do, I do
23 want to argue -- let me see if I can phrase this in a way
24 that's consistent with my thoughts because I'm kind of
25 tired -- I want to argue first that as the defendant

1 understood his agreement with Mr. Starzecki, there was no need
2 for any billing records, but that's something that arises
3 separate and apart from the language of the agreement and
4 arises from my client's testimony regarding the understanding
5 he had based on his conversation with Mr. Freeman. So I don't
6 see that as being controversial.

7 THE COURT: All right. And then Mr. DiChiara, is
8 there anything that you propose to argue about the agreement?

9 MR. DiCHIARA: I don't see anything that I would
10 argue that would get into the, whether it's ethical or not
11 ethical with regard to the retainer agreement, Your Honor.

12 THE COURT: All right. Then I need to hear from the
13 government what you intend to say about the agreement or the
14 billing records.

15 MS. POSA: I mean, I don't think we're going to --
16 we'll abandon the argument about the nonrefundable retainer
17 agreement. We spent so much time briefing it, it kind of
18 seems to sad to say goodbye, but we're going to do that now.

19 THE COURT: Okay.

20 MS. POSA: Happily.

21 THE COURT: So you are saying what you are
22 abandoning is the argument that a nonrefundable retainer
23 agreement would be a violation of the disciplinary rules?

24 MS. POSA: Right.

25 THE COURT: Okay. So that won't come into this case

1 at all. Certainly, if you don't raise it, the defense isn't
2 going to raise it. Okay.

3 And then billing records, it may be slightly
4 different.

5 MS. POSA: As to the billing records, what we're
6 seeking to impeach is Mr. Hymowitz's statements on tape and on
7 the stand that he would just throw away records and we would
8 like to do that. One way would be to say as a lawyer, he
9 certified that he knew that was not permissible, but that's
10 about it for that.

11 MR. SERCARZ: I didn't hear the end of Ms. Posa's
12 sentence. I'm sorry.

13 THE COURT: Why don't you come up? It will wake you
14 up.

15 MR. SERCARZ: I could use it also, Your Honor.

16 MR. EVANS: Can Mr. Dunn be excused to use the
17 restroom?

18 THE COURT: If you don't mind him not being here.
19 He has to waive his presence or do you want --

20 MR. EVANS: Yes.

21 THE COURT: All right.

22 MS. POSA: I think, at most, I'm just going to say
23 that one of the reasons why we know Mr. Hymowitz was not
24 honest in his conversations or on the stand is because lawyers
25 are required to keep billing records for seven years so why

1 would he be throwing them out as soon as they're paid. That's
2 about it.

3 MR. SERCARZ: Isn't the only basis for that the very
4 disciplinary rules that the Court decided to exclude, Your
5 Honor?

6 MS. POSA: I think they're all in now.

7 THE COURT: I think it comes from his testimony that
8 he acknowledged these rules.

9 MR. DiCHIARA: Judge, the problem --

10 THE COURT: I think.

11 MR. SERCARZ: He said, he said right or wrong, that
12 he thought that those records referred to the escrow accounts.

13 I mean, the government has free rein to say it's
14 implausible, it doesn't make sense, but I don't think that
15 they should adopt a formulation that indicates that this is
16 the state of the law because, frankly, I think the law as I
17 have learned it from Mr. Ross is a little bit more
18 complicated.

19 MR. DiCHIARA: Judge, I have to inject one thing.
20 My understanding of his testimony was that there were no
21 billing records because there was a retainer, so he never sent
22 them billing records.

23 Now, I don't know of any regulation that requires
24 you to have to create billing records. If billing records are
25 created, you must, you have to hold them, but there's no

1 regulation that says you must create billing records and so
2 his testimony is that there are no billing records. I think
3 it would be wrong for the government to say he's violating
4 something if he had no obligation to make the billing record
5 in the first place.

6 MS. POSA: The issue is just impeaching his
7 credibility on the stand and also in the tapes. On the tapes,
8 he said, As a general practice, I throw away billing records.
9 As we brought out in his direct testimony, under the
10 professional responsibility rules, you can't do that.

11 So, what we're saying for a lot of other reasons as
12 well is that that's implausible. We're not talking about
13 these -- we all agree that there's no billing records for
14 Bogdan Starzecki for different reasons. That's just one more
15 reason why his statements particularly on the tape about
16 ripping things out of a looseleaf we think are not plausible.
17 It's a small point, but it's in evidence already.

18 MR. SERCARZ: The argument that it allegedly
19 violates the disciplinary rules doesn't add or subtract from
20 the government's opportunity to impeach or the inferences that
21 they seek to draw, and it is taking what I have been told is a
22 complicated issue and oversimplifying it, with all due
23 respect.

24 We don't have, we -- the Court resolved, after a lot
25 of consideration, that we weren't going to have the back and

1 forth about what constitutes a billing record for purposes of
2 the disciplinary rules, can a billing record be created after
3 the fact, is an invoice the only form of a billing record
4 which qualifies under the rules of professional
5 responsibility.

6 So, for the reasons I just gave and Mr. DiChiara's
7 reason, I don't think the government should avail itself of
8 that argument.

9 THE COURT: I had like to remember exactly what the
10 testimony was today from Mr. Hymowitz. What did you ask him
11 with respect to the billing records?

12 MS. POSA: Well, we showed him the signed biannual
13 certifications that he signed.

14 THE COURT: Right.

15 MS. POSA: We admitted those into evidence. Those
16 reference the rules. We read the rules to him and he
17 acknowledged that that's what they were and he said that he
18 thought that they didn't apply.

19 THE COURT: Could I have the document? Because I
20 believe what you did was not really go back to the
21 disciplinary rules.

22 MS. POSA: I read them.

23 THE COURT: No. You read what was in the
24 certification.

25 MS. POSA: But that references the rules and I read

1 the rules themselves.

2 THE COURT: Could I see the certification, please?

3 MR. EVANS: Your Honor, I don't have a dog in this
4 fight about the disciplinary rules, but I would point out that
5 the disciplinary rules and the Code of Professional
6 Responsibility in New York State has changed significantly in
7 the last ten years with the adoption of the code and the
8 standard and away from New York's own treatment of it and
9 there are all kinds of new responsibilities and delineations.

10 I just hear counsel and the U.S. Attorney talking
11 about the rules as if they're written in stone and they have
12 changed significantly.

13 THE COURT: I just want to know what was in the
14 testimony because I think anything that came out in the
15 testimony would be fair game, but my recollection is that if
16 we were dealing with a direction about what was in the
17 disciplinary rules, then that would have come from me or from
18 a witness and it would have come with the limiting
19 instruction. There was none requested and I think it's
20 because what was read to the witness that he responded to is
21 right there in the certification and it was not the
22 disciplinary rules as such.

23 May I see it, please?

24 MS. POSA: I read the certification but then I read
25 the rules that are referenced there because they're not on the

1 face of the certification.

2 THE COURT: And the rule that you read was what?

3 MS. POSA: Now I don't have them in front of me so I
4 can't say. It was the one for the 1st Department and then
5 that one references I think it's professional responsibility
6 Rule 1.15, so then I read that.

7 THE COURT: Which said that they had to --

8 MS. POSA: They had to keep all billing records for
9 seven years.

10 THE COURT: And what did he say?

11 MS. POSA: He acknowledged that's the rule and he
12 thought it didn't apply. That's fine. That's a question for
13 the jury. I really believe that under Old Chief, we have a
14 right to present our case based on the evidence that's already
15 in the record the way we see fit and if Mr. Sercarz doesn't
16 agree with our interpretation, then he can argue that in his
17 summation.

18 MR. SERCARZ: But the mere asking of a question does
19 not put an item into evidence.

20 THE COURT: No, but if the witness, if the witness
21 agreed that that is what the rule says, then he is bound by
22 that. No? Did he? I think he did.

23 MS. POSA: He did.

24 MR. SERCARZ: My recollection is not that he agreed
25 with what was said, but that he said, I thought those

1 regulations applied to my escrow account. That was my
2 recollection of the testimony.

3 THE COURT: Right. So why can't it just go in that
4 way? The government was saying --

5 MR. SERCARZ: The government is now seeking to say
6 it's a rule, the client has it wrong, it doesn't apply just to
7 his escrow account, and based on this rule, which you can now
8 consider because I put it in the form of a question to a
9 witness, the defendant violated the rule and, therefore, has
10 engaged in a sham.

11 MS. POSA: That's not --

12 MR. SERCARZ: I don't think you can do that.

13 MS. POSA: That's what we've been saying from the
14 very beginning as exactly what we do not plan to say. We plan
15 to say he signed the certifications. He knew the rules.

16 When he said that he didn't keep any billing
17 records, it's patently untrue, in addition to the fact that
18 the rules -- we can see from those Lutheran Synod records that
19 he kept very detailed records and he also testified that he
20 still had those in his possession long seven years after.
21 That doesn't make any sense.

22 What he said on tape was we don't keep any billing
23 records. He didn't specify escrow. This is just a way of
24 impeaching his statements, but I guarantee, and you are
25 welcome to ask for a side bar, if I get up there and say

1 Mr. Hymowitz violated the rules, therefore, he committed a
2 crime, that will be stricken immediately, but I won't say it.

3 THE COURT: Let's hear it again, your formulation,
4 insofar as your dealing with the rules.

5 MS. POSA: I'm basically going to say you heard a
6 lot of reasons why you should not believe Mr. Hymowitz's
7 testimony or his statements on the tape. One of them is that
8 when he said that he doesn't keep any billing records and he
9 throws them out as soon as they're paid is the fact that that
10 would have violated the very rules that he's certified that he
11 read.

12 MR. SERCARZ: Bingo. I object.

13 MS. POSA: It would have violated.

14 MR. SERCARZ: I object.

15 MS. POSA: I'm not saying that he did violate it.

16 MR. SERCARZ: I object.

17 MS. POSA: I just feel like Mr. Hymowitz opened the
18 door when he testified. We had briefed this and so
19 scrupulously tried to stay away from it and he got up there
20 and he has a right to be confronted with what he acknowledged
21 and certified.

22 MR. SERCARZ: I didn't open the door. You asked
23 this line of questions on cross-examination which is not
24 defense counsel opening the door on the direct. I didn't go
25 into the attorney's certifications. I didn't read him any

1 rules. I didn't try and get him to take his conduct and
2 accommodate it within the rules. I did nothing of the kind
3 that would have opened the door to a discussion about whether
4 or not my client's conduct violated the disciplinary rules. I
5 didn't.

6 THE COURT: My only concern is that we not get to
7 the point where we have the issue of violating the rules
8 because we would need a limiting instruction, I think, and I
9 never gave one and one wasn't requested in the way this came
10 out. I had proposed one if we were going to go the other
11 route.

12 So I would like to see if the government has any
13 other way that they can present this other than using it
14 directly as, that the violation of the rules suggest that,
15 suggests something about his culpability.

16 MS. POSA: I think Mr. Capozzolo has something to
17 add.

18 THE COURT: Okay.

19 MR. CAPOZZOLO: Judge, this is what we're seeking.

20 Mr. Hymowitz, in discussing whether or not he had
21 bills in the recorded conversations, made a general statement
22 that he never keeps bills. He testified that he did keep some
23 bills and acknowledged that he has to keep them, certain bills
24 related to his ethical rules.

25 THE COURT: That's so far so good, I think.

1 MR. CAPOZZOLO: Yes. And we are saying, ladies and
2 gentlemen of the jury --

3 MR. SERCARZ: Not objectionable, but in my view
4 contrary to what he said on the witness stand. That's neither
5 here nor there.

6 MR. CAPOZZOLO: Ladies and gentlemen of the jury,
7 you should not accept the defendant's testimony because when
8 he was telling Agent Richards we don't keep any bills, he was
9 merely using that as a ruse to push off providing any detailed
10 records about this so-called legal agreement with Starzecki
11 that's not true.

12 MR. SERCARZ: That's fine.

13 MR. CAPOZZOLO: That's all we're saying.

14 THE COURT: Okay.

15 MR. SERCARZ: That's fine.

16 THE COURT: Okay. I think the way you are saying it
17 is fine. We just do not want to go back to the original
18 formation that was at issue in the beginning of this case.

19 MR. SERCARZ: No.

20 MS. POSA: Right.

21 THE COURT: But be very careful. I would urge
22 Ms. Posa to sit down and write it. Everything else, you can
23 do contemporaneously, but I think this, carefully write it
24 down and if you have any questions, we can go over it first
25 thing in the morning.

1 Okay. Anything else?

2 MR. SERCARZ: With regard to my summation, Your
3 Honor --

4 THE COURT: Yes.

5 MR. SERCARZ: -- I have no intention of arguing that
6 the excerpts are selective because of the rules of evidence.

7 THE COURT: Right.

8 MR. SERCARZ: That was the problem on the opening.
9 I've been chastened and I'm well aware of that, but I do have
10 a question.

11 THE COURT: Okay.

12 MR. SERCARZ: The Court urged us all to be
13 consistent in referring to certain conduct as unlawful
14 financial transactions rather than money laundering.

15 THE COURT: Correct.

16 MR. SERCARZ: My client is charged with unlawful
17 financial transactions.

18 THE COURT: Monetary transactions, they're called.

19 MR. SERCARZ: Fine. Under 1957.

20 THE COURT: Right.

21 MR. SERCARZ: When it comes time to describe what
22 Mr. Starzecki did with Mr. Koczon, that kind of conduct is a
23 little bit different. It would have been prosecuted under a
24 different section of the law. That's a 1956 --

25 MS. POSA: He actually did plead guilty and he pled

1 guilty to the same statute for money laundering.

2 MR. SERCARZ: All right. I guess this leads to the
3 question am I bound, when I refer to what it is that Starzecki
4 did with Mr. Koczon to again say that he engaged in an
5 unlawful monetary or financial transactions when the conduct
6 in which he engaged certainly comes closer to what a jury
7 would understand to be money laundering.

8 MS. POSA: Your Honor, we think what they did is
9 classic money laundering. I think what's good for the goose
10 is good for the gander.

11 THE COURT: Let me just ask you, was that a
12 reduction in the charge for Mr. Starzecki?

13 MS. POSA: No. Mr. Starzecki, he pled to a whole
14 bunch of things he had never been charged with in his
15 information. That was not a break. One of the things he pled
16 guilty to was he engaged in unlawful monetary transactions.
17 That was a new charge. And the reason why we did it that way
18 was to make sure that he had the same charges that were faced
19 by the defendants.

20 THE COURT: Well, I really think I already ruled on
21 this when it came up and I do not think I should make any
22 change now.

23 MR. SERCARZ: Very well. Then I'll avoid the term
24 money laundering --

25 THE COURT: Right.

1 MR. SERCARZ: -- in talking about Mr. Koczon.

2 THE COURT: Frankly, I do not think it would be
3 helpful for your client either, but that is a different
4 question.

5 Okay. Anything else?

6 MR. SERCARZ: There's something else but not
7 relating to the summation.

8 THE COURT: Okay. Go ahead.

9 MR. SERCARZ: I have a motion pending with you to
10 dismiss the charges. The Court has reserved. And now that
11 all the evidence is in, I would renew the motion to dismiss.

12 I know the Court doesn't want to hear lengthy
13 argument on it. I will point out that the government called
14 Anne Marie --

15 THE COURT: No.

16 MS. POSA: No, we didn't.

17 MR. SERCARZ: That Mr. Dunn called Anne Marie
18 Hendrickson but the government elicited from Ms. Hendrickson
19 some things about the billing process, among them the fact
20 that what people are certifying to when they file their
21 certifications is the estimate of what portion of the job is
22 complete.

23 Indeed, I got up then on, I don't know whether it's
24 redirect -- recross, I guess, because I wasn't the lawyer who
25 called the witness and said, in other words, if the estimate

1 of the percentage of each line item complete is accurate, then
2 is the requisition accurate. She said yes.

3 THE COURT: But the government had also asked a
4 slightly different question so each one of you can argue what
5 you want to the jury --

6 MR. SERCARZ: The point here has always been that in
7 order for a defendant in this case to be guilty, it is not
8 enough that the government establish that the defendant
9 receive a kickback because not all kickbacks result in
10 inflated requisitions for payment, indeed, especially not in
11 this case where Mr. Starzecki is making money by lying about
12 the amount that the laborers are being paid.

13 MS. POSA: Actually -- I'm sorry.

14 MR. SERCARZ: Therefore, I respectfully submit there
15 must be some evidence in the case that the defendant whose
16 guilt or innocence you are considering knew that the
17 requisitions were inflated. And as to my client,
18 Mr. Hymowitz, I renew the argument that there simply is no
19 such evidence.

20 THE COURT: All right. Counsel, I think I -- go
21 ahead.

22 MR. DiCHIARA: You reserved on that, Judge, and I
23 just want for the record that I join in Mr. Sercarz's
24 application because I think it equally applies to Mr. Freeman.

25 THE COURT: Any motions from Mr. Dunn?

1 MR. EVANS: We'll renew our motion for dismissal as
2 to Mr. Dunn and without lengthy argument, I will just say that
3 I don't believe in its case in chief that the people of the
4 U.S. Attorney's Office brought forth evidence of one single
5 requisition which they say was inflated, nor did they bring
6 Mr. Armstrong as to the extortion who they said was being
7 threatened.

8 THE COURT: All right. Did the government want to
9 respond to that?

10 MR. CAPOZZOLO: Judge, by your statements, I know
11 you're aware that our theory is the bid amount was inflated
12 so, therefore, 20 percent of the higher number is a higher
13 number.

14 The only factual thing I wanted to state is I
15 believe Bed-Stuy contracts never said it's not a prevailing
16 wage job. So the stealing from the workers' salaries did not
17 apply to that particular project.

18 THE COURT: All right. Counsel, I will reserve on
19 all Rule 29 motions and we will go to the jury and we will see
20 what happens.

21 MR. EVANS: Thank you.

22 MR. SERCARZ: Thank you, Your Honor.

23 THE COURT: And I would like to see whether or not
24 we can get --

25 MR. DiCHIARA: Judge, one last thing. In going over

1 some of my cross-examination last night of Mr. Starzecki, I
2 noticed that the stenographer had put the name "Wolitz" when
3 it should have been "Walters" so we'll go through that and
4 bring out the relevant section.

5 THE COURT: Okay. That should get corrected.

6 MR. EVANS: I should just --

7 THE COURT: Why don't you let all counsel know. If
8 all counsel are in agreement, I would authorize you to get in
9 touch with the court reporter as long as you are all in
10 agreement on it.

11 MR. DiCHIARA: Okay.

12 THE COURT: And Mr. Evans?

13 MR. EVANS: I expect my close will be less than the
14 hour that I reserved. Probably more like 45 minutes, Your
15 Honor.

16 THE COURT: Okay. And because what I am trying to
17 see is whether or not we could get everything done tomorrow
18 because if summations are long, we may have to take recesses
19 even in the middle of summations if they are too long, but we
20 certainly need to take recesses in between. So I just ask you
21 to do the best you can so we can move this along.

22 MS. POSA: And we should all be expected to close
23 and also rebut tomorrow, right? There's no question that some
24 people should think about maybe waiting until Monday.

25 THE COURT: No. No. I want everything done

1 tomorrow if at all possible. So, no. That is exactly my
2 point.

3 MS. POSA: Great.

4 THE COURT: All right. I will return these
5 documents.

6 MS. POSA: Thank you, Your Honor.

7 THE COURT: All right. Then have a good night.

8 MS. POSA: Wait. Your Honor, there is one thing.

9 THE COURT: Yes.

10 MS. POSA: It's Mr. Dunn's post-arrest statement
11 that we tried to offer in evidence.

12 MR. SERCARZ: Yes.

13 MS. POSA: I think it's his statement. It comes in
14 as a statement of a party opponent and mainly, just because
15 it's easier for the jury if they want to review it rather than
16 having to do a read back of the testimony, just give it to
17 them.

18 MR. SERCARZ: I would respectfully object.

19 THE COURT: Sustained.

20 MR. SERCARZ: Thank you, Your Honor.

21 MS. POSA: Okay.

22 (Matter adjourned to March 27, 2014 at 9:30 a.m.)
23
24
25

I N D E XWITNESSPAGE**L E E H Y M O W I T Z**

DIRECT EXAMINATION (Continuing) BY

MR. SERCARZ 1918

CROSS EXAMINATION

BY MS. POSA 1975

REDIRECT EXAMINATION

BY MR. SERCARZ 2042

RECROSS-EXAMINATION

BY MS. POSA 2056

CHARLOTTE LEE 2061

DIRECT EXAMINATION

BY MR. SERCARZ 2061

CROSS-EXAMINATION

BY MR. CAPOZZOLO 2073

DOROTHY SICIGNANO 2075

DIRECT EXAMINATION

BY MR. CAPOZZOLO 2075

CROSS-EXAMINATION

BY MR. SERCARZ 2079

2158

1 REDIRECT EXAMINATION

2 BY MR. CAPOZZOLO 2089

3 RECROSS EXAMINATION

4 BY MR. SERCARZ 2096

5
6 S. A. N A U S H A N R I C H A R D S

7 DIRECT EXAMINATION

8 BY MS. POSA 2098

9 CROSS EXAMINATION

10 BY MR. EVANS 2109

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12
13 E X H I B I T S

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16 Government's Exhibit 605 1993

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18 Government's Exhibit 642 2030

19
20 Government's Exhibit 641 2039

21
22 Defendant's Exhibit Hymowitz D 2044

23
24 Government's Exhibits 900 and 901 2056

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